

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D. C.**

In the Matter of	)	
	)	
Unbundled Access to Network Elements	)	WC Docket No. 04-313
	)	
Review of Section 251 Unbundling	)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange	)	
Carriers.	)	

**COMMENTS OF THE PUBLIC SERVICE  
COMMISSION OF THE STATE OF MISSOURI**

**October 4, 2004**

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COMMISSION OF THE STATE OF MISSOURI**

The Public Service Commission of the State of Missouri ("MoPSC") offers the following comments in response to the Federal Communication Commission's ("Commission") Order and Notice of Proposed Rulemaking (NPRM) released August 20, 2004 in the above docketed cases. By this NPRM, the Commission seeks comment on alternative unbundling rules that will implement the obligation of section 251(c)(3) of the Communications Act of 1934, as amended, in a manner consistent with the *United States Telecom Ass'n v. FCC*, 359 F.3d 554, 565-69 (D.C. Cir. 2004) ("*USTA IP*").

The Commission encourages states to file summaries of state proceedings, especially highlighting information that would be relevant under the guidance of *USTA II*. The MoPSC, through its comments, offers the following summaries of dockets that may be relevant to the Commission's goal in developing alternative unbundling rules. Much of the supporting evidence and documentation provided in these dockets is highly confidential and subject to MoPSC protective orders. The MoPSC also attaches a copy of its reply comments (Exhibit A) in response to the Commission's NPRM initiating its first triennial review of unbundled network elements.

## **I. Triennial Review Order**

In response to the Commission's triennial review order (TRO), the MoPSC opened Case No. TO-2004-0207, *In the Matter of a Commission Inquiry in the Possibility of Impairment without Unbundling Local Circuit Switching When Serving the Mass Market*, and established a procedural schedule consisting of three phases: Phase I – define particular geographic markets and the appropriate multi-line DS0 customer cross-over between the mass and enterprise markets; Phase II – determine whether FCC-defined triggers to measure existing switch deployment are met or whether a potential deployment analysis shows non-impairment and, if necessary, approval of the incumbent LEC batch hot cut process; and, Phase III – determine whether FCC-defined triggers or potential deployment analysis for a finding of non-impairment have been met for specific types of high-capacity loops-dark fiber, DS3, or DS1-at particular customer locations, and whether FCC-defined triggers or potential deployment analysis for a finding of non-impairment have been met for non-access to incumbent LEC transport on specific routes. The MoPSC completed Phase I before suspending its TRO proceedings. Following is a summary of its findings with a copy of the order attached as Exhibit B.

## **II. MoPSC Findings – Geographic Markets And Multi-Line DS0 Customer Cross-Over**

### **A. The Geographic Market Area**

The Commission provided two general directives to assist state commissions in determining the geographic markets: (1) determinations must be supported by a granular analysis; and, (2) no market may be as large as the state in which it resides, nor may it be so small that competitors cannot take advantage of scale and scope economies available to a wider market. The MoPSC record contained evidence on the following market proposals: the wire center, the exchange, the local access transport area (LATA) and the metropolitan statistical area

(MSA). According to the findings in the case, the wire center and exchange definitions can be considered granular, but the MSA cannot. The wire center definition is arguably too granular and there was no credible evidence in the record indicating a competitor serving in a wire center would be able to take advantage of economies of scale and scope [available in a larger market]. The MoPSC found that the exchange definition does not have that flaw. Evidence was presented indicating the exchange definition complied with the kind of analysis envisioned by the Commission in the TRO. The MoPSC concluded the exchange is the geographic market definition that best meets the Commission's directives.

## **B. The Enterprise Market Cutoff**

The Commission provided two options to determine the point at which a mass-market DS0 customer becomes an enterprise-market customer: (1) determine the [financial or cost] point where it becomes economically feasible to serve a multi-line DS0 customer with a DS1 line; and, (2) the carve-out exception, where such was in effect.

The MoPSC found no evidence that the carve-out exception was ever put into effect in Missouri. Much evidence was presented that the carve-out exception was not put into effect; therefore, the MoPSC found the only method available to it for determining the cut-over point was through economic analysis. Only Sprint presented "credible analysis" indicating an economic cut-off [or crossover] point. Sprint's analysis demonstrated it was economically feasible to serve a customer with 10 or fewer DS0 lines. A customer with eleven or more DS0 lines would be economically served with a DS1 line. Based on this analysis, the MoPSC found customers served with 10 or fewer DS0 loops at a particular location are mass-market customers.

### **C. Dissenting Opinion**

It should be noted that Commissioner Connie Murray filed a dissenting opinion stating that the MSA is the appropriate market and the correct crossover point is four DS0 lines. Following is a summary of the points made in the dissenting opinion. MSAs by definition have high degrees of integration, recognized population nuclei, and recognized economic linkages between the urban core and outlying integrated areas. They are, therefore, markets. Exchanges are too small for competitors serving only that area to be able to capture scale and scope economies while the MSA provides little variation across its defined area that might negatively affect a competitor's ability to serve mass-market customers. An SBC witness presented an analysis supporting its position that customers using as little as four DS0 lines could economically be served with a DS1.

### **III. Status of Competition in Missouri**

Since the second and third phases of the Missouri proceeding were not completed, the MoPSC submits summaries of its review of effective competition in certain Southwestern Bell Telephone, L.P d/b/a SBC Missouri (SBC) and Sprint of Missouri, Inc. (Sprint) exchanges to assist the Commission in determining the presence of competitors in Missouri markets. The MoPSC orders and commissioner separate opinions in these proceedings are attached as Exhibit C and D respectively.

To complete its analysis, the MoPSC not only has to determine whether or not competition exists but also that such competition is *effective*. Section 386.020(13) of the revised Missouri statutes identifies the following factors to be considered when determining effective competition:

- (a) The extent to which services are available from alternative providers in the relevant market;

- (b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions;
- (c) The extent to which the purposes and policies of Chapter 392 RSMo, including reasonableness of rates, as set out in Section 392.185 RSMo are being advanced;
- (d) Existing economic or regulatory barriers to entry; and
- (e) Any other factors deemed relevant by the MoPSC and necessary to implement the purposes and policies of Chapter 392 RSMo.

**A. SBC Effective Competition**

Southwestern Bell is a price cap regulated large incumbent local exchange company that has had at least one certified competitive local exchange carrier (CLEC) in at least one of its exchanges since December 31, 1996, thus allowing it to be regulated pursuant to 392.245 RSMo 2000. Case No. TO-2001-467 was established March 13, 2001 to investigate the status of competition in SBC Missouri exchanges and an order was issued December 27, 2001. While this record is almost three years old, the findings from that order are summarized below.

In order for the MoPSC to make the determination that effective competition exists in Missouri, it must have evidence of equivalent and substitutable services. Market share was considered in conjunction with evidence of the number of carriers, including resellers, actually providing service, number of certificated carriers, CLEC owned fiber facilities, and the comparative longevity of the companies doing business. Effective competition was not found where evidence did not establish a substantial number of customers were being provided service from widely available CLEC facilities. The MoPSC found the mere presence of resellers was not

substantial evidence for it to determine that effective competition exists since reseller's costs are tied directly to SBC's rates.

Based on the evidence in the proceeding, the MoPSC found effective competition exists for SBC's core business services in the St. Louis and Kansas City exchanges since a substantial number of business customers are being provided functionally equivalent or substitutable basic local service from widely available CLEC-owned facilities. The MoPSC also found that a substantial number of residential customers were being provided functionally equivalent or substitutable basic local service from widely available CLEC-owned cable telephony facilities in the St. Charles and Harvester exchanges. However, for the rest of the SBC exchanges, the MoPSC stated that, "[SBC] has not provided substantial evidence that establishes that, for *all* of SBC's regulated service offerings, there are alternative providers who are providing functionally equivalent or substitutable services throughout each of [SBC's] Missouri exchanges, at comparable rates, terms and conditions." The MoPSC went on to state, "...very little evidence was presented to persuade the Commission that alternative providers are actually offering services that are functionally equivalent or substitutable for [SBC's] services at comparable rates, terms and conditions."

It should be noted that this order and the evidence upon which it was based is approximately three years old and SBC has just recently asked the MoPSC to again investigate the current status of competition in its Missouri exchanges.

## **B. Sprint Effective Competition**

Sprint is a price cap regulated large incumbent local exchange company that has had at least one certified CLEC in at least one of its exchanges since December 15, 1998. The MoPSC opened Case no. IO-2003-02821 on February 10, 2003 to investigate the status of competition in



Sprint's Missouri exchanges. While Sprint serves in 80 mostly rural exchanges throughout Missouri, Sprint only requested that 5 exchanges be examined for competitive classification for business and residential service. The MoPSC, on December 4, 2003, issued its order determining the state of competition, as defined in section 386.020(13) RSMo, in Sprint's exchanges.

Consistent with the MoPSC's previous finding in the SBC competition case that the mere presence of resellers was not evidence of effective competition, Sprint only claimed the presence of facilities-based carriers as evidence of effective competition for local services. Sprint stated that it had no way of determining how many access lines it had lost to wireless competition; thus, it did not rely on competition from wireless providers as evidence of effective competition for local services. In its order, the MoPSC stated that competition from wireless services provided a "background effect" in all 80 of Sprint's exchanges.

To determine if effective competition exists, the MoPSC considered evidence on such things as: non-telephone franchises a CLEC had in an exchange (i.e., a cable affiliate); market share; the comparative longevity of the CLEC doing business in the exchange; the rates currently charged by the CLEC in that exchange; and, whether or not CLEC facilities could serve the entire exchange presently. Based on the evidence in the record, the MoPSC found effective competition exists for the residential and business access line services in the Sprint exchanges of Norborne, Rolla, and Kearney.

#### **IV. Summary**

In summary, the MoPSC respectfully submits these comments in response Commission's Order and Notice of Proposed Rulemaking (NPRM) released August 20, 2004 in the above docketed cases. Included in its comments, the MoPSC submits summaries of Missouri

proceedings that may be relevant to the Commission's goals in developing alternative unbundling rules.

Respectfully submitted,

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Federal Communications Commission  
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July 16, 2002

**RE: Reply Comments by the Public Service Commission of the State of Missouri filed in the proceeding captioned: *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147.**

Madam Secretary:

The Public Service Commission of the State of Missouri respectfully submits these comments in reply to April 5, 2002 pleadings filed in response to the to the Notice of Proposed Rulemaking (“*Notice*” or “*Triennial Review*”) issued by the Federal Communications Commission (“Commission” or “FCC”) in the above-captioned proceedings.<sup>1</sup> Because of the critical impact action in this proceeding will have on existing State commission policy initiatives, we felt compelled to file and specifically endorse NARUC’s April 5, 2002 comments (1) respectfully requesting that the FCC immediately convene a § 410(b) Federal-State Joint

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<sup>1</sup>. *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-92, 96-98 and 98-147, Notice of Proposed Rulemaking, FCC 01-361 (rel. Dec. 20, 2001) (“*Notice*”).

Conference to facilitate, inform and coordinate its implementation of the three-year UNE review and (2) assure that States retain the authority to impose additional unbundling “obligations upon incumbent LECs beyond those imposed by the national list, as long as they meet the requirements of [§] 251.” Specifically, we endorse the following NARUC positions:

- (1) *A Joint Conference is in the Public Interest*: Given the critical role played by State regulators in implementing the statutory UNE regime, as well as the intensive data- and State-specific nature of the three-year review, *at a minimum*, the FCC should establish a formal mechanism to secure the State participation necessary for an informed application of the statutory “necessary” and “impair” standards.
- (2) *State Authority To Add New UNEs/Obligations*: We agree with the FCC findings that § 251(d)(3) of the 1996 Act “grants State commissions the authority to impose additional obligations upon incumbent LECs beyond those imposed by the national list, as long as they meet the requirements of [§] 251.” We believe Congressional intent as outlined in the 1996 federal statute, existing State enabling statutes, and the FCC rules and prior findings in this and related dockets support this approach.<sup>2</sup>
- (3) *Impact of Federal Minimum List*: As recognized implicitly in the *UNE Remand Order*’s specific State authority findings, the States are better positioned to conduct a detailed review of additional unbundling that is appropriate for local market conditions. Consequently, the FCC should defer to State determinations of whether unbundling requirements in any State should collapse to the existing or new federal minimums. Assuming any new federal minimum removes one or more UNE from the national list or restricts availability of any UNE, such limitations should not apply in any State unless that State first determines that a competitor’s access is “necessary” or whether lack of access “would impair” that competitor’s ability to offer services, or is required as a matter of State rule or statute.<sup>3</sup>

We appreciate the opportunity to make our views known.

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<sup>2</sup> See, *Implementation of the Local Competition Provisions, of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3766-7 at ¶¶ 153-154 (rel Nov. 5, 1999) (“*Remand Order*”). See also NARUC’s February 2002 *Resolution Concerning the States’ Ability to Add to the National Minimum List of Network Elements* (“[NARUC] urges the FCC to recognize that States may continue to require additional unbundling beyond that required by the FCC’s national minimum.”)

<sup>3</sup> See, *NARUC December Letter* at 2 (“[A] party seeking to remove or scale back a UNE bears the burden of proof to show, by a preponderance of evidence, that the requested relief is justified.”)

Respectfully submitted,

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**Exhibit B**

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**  
At a session of the Public Service Commission  
held at its office in Jefferson City  
on the 24th day of February, 2004.

In the Matter of a Commission Inquiry into )  
the Possibility of Impairment without ) **Case No. TO-2004-0207**  
Unbundled Local Circuit Switching When )  
Serving the Mass Market )

**ORDER ESTABLISHING GEOGRAPHIC MARKETS  
AND ENTERPRISE MARKET CUTOFF**

**Syllabus:**

This order establishes the exchange as the appropriate geographic market over which to conduct the impairment analysis. It also establishes that the DS0 cutoff is ten DS0 lines (that is, it is more economical to serve a customer with a DS1 line than with ten or more DS0 lines).

**Background:**

The purpose of this case is to make certain determinations about the state of competition (and perhaps the potential for competition) to provide basic local telecommunications service to residential and small business customers in Missouri. The Federal Communications Commission (FCC), in its Triennial Review Order,<sup>4[1]</sup> made a general finding that Competitive Local Exchange Carriers (CLECs) would be impaired in their ability to compete for these customers if the CLECs were not able to purchase unbundled local switching capacity from Incumbent Local

Exchange Carriers (ILECs). But the FCC did not make this finding un rebuttable; rather it left it up to state commissions to examine the markets in detail to determine if this general finding is not valid in specific markets. In addition to determining the geographic market, the FCC also left it to the state commissions to determine the demarcation (in terms of the number of lines) between mass market customers and enterprise customers. Armed with these two determinations, the state commissions are then to conduct an analysis to find whether impairment exists in specific markets.

Given the nature of the task allotted to this Commission by the FCC, this case was split into three phases. In this first phase, the parties addressed and the Commission will decide the following two issues:

- 1) For purposes of examining whether there is "non-impairment" in the provision of unbundled local switching to serve mass-market customers, what are the relevant geographic markets within the state of Missouri?
- 2) For purposes of the 47 CFR 51.319(d)(2)(iii)(B)(3) analysis, how many DS0 lines must be supplied to a multi-line DS0 customer before that customer is considered to be an enterprise customer rather than a mass market customer?

By making an early determination on these two issues, the Commission will be able to pursue a more focused impairment analysis, and ultimately be able to make a better, more informed final decision.

The Issues:

Geographic Market Area:

The FCC, in the TRO, has sent two general directives on this issue: it said 1) the geographic area has to be "granular," but 2) not so small that a potential competitor serving that market

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<sup>4[1]</sup> REPORT AND ORDER AND ORDER ON REMAND AND FURTHER NOTICE OF PROPOSED RULEMAKING adopted February 20, 2003, released August 21, 2003 and corrected September 17, 2003 entered in

alone cannot take advantage of economies of scale and scope. The FCC's guidance on this issue is found at paragraphs 495-496:

495. The triggers and analysis described below must be applied on a granular basis to each identifiable market. State commissions must first define the markets in which they will evaluate impairment by determining the relevant geographic area to include in each market.<sup>1536</sup> State commissions have discretion to determine the contours of each market, but they may not define the market as encompassing the entire state. Rather, state commissions must define each market on a granular level, and in doing so they must take into consideration the locations of customers actually being served (if any) by competitors,<sup>1537</sup> the

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CC Docket Nos. 01-338, 96-98 and 98-147 (the "TRO").

<sup>1536</sup> Chairman Powell's criticism of the discretion we give states to define the relevant geographic market for purposes of the switching analysis is misplaced. *See Chairman Powell Statement* at 6-7. It is fundamental to our general impairment analysis to consider whether alternative facilities deployment shows a lack of impairment in serving a particular market. Indeed, we adopt triggers for the states to apply to measure impairment by considering this alternative facilities deployment in our analysis of loops, transport, and switching. Although the incumbent LECs argue that we should apply a zone approach to transport and loops, we define the relevant geographic market for transport as route-by-route, and the relevant geographic market for enterprise loops as customer-by-customer, because of the economic and operational issues associated with alternative transport and loops deployment. As Chairman Powell recognizes, a switch can theoretically serve wide areas (provided that the costs of transporting traffic back to the switch are not cost prohibitive), so one would expect a broader market definition for switching than for loops or transport. *Chairman Powell Statement* at 7. Indeed, because we measure alternative "switching" in a given market, not switches located in that market, the physical location of the switch is not necessarily relevant to defining the geographic market. For example, a switch located in Rhode Island could satisfy the switching trigger in Massachusetts if it is serving customers in the relevant market in Massachusetts. *Chairman Powell Statement* at 7. To the extent the states define a geographic market broadly, it is more likely that such geographic market will capture sufficient switching alternatives to satisfy the trigger, thus resulting in removal of the particular UNE in that geographic market (a result the dissents would seem to endorse). The exact parameters of these geographic markets, however, cannot be defined nationally for switching because, as both incumbent LECs and competitive LECs agree, there are extreme variations in population density, and thus wire center line densities, across the country. *See generally* AT&T Jan. 17, 2003 *Ex Parte* Letter; SBC Jan. 14, 2003 UNE P *Ex Parte* Letter; WorldCom Jan. 8, 2003 Switching *Ex Parte* Letter. States are, therefore, better positioned to draw these lines. Because states are more familiar with how these variations have affected competitive entry, and because there was no credible record evidence to show how we could establish these boundaries based on a national rule, we ask the states to create these boundaries. We do, however, provide the states significant guidance. We require state commissions to define each geographic market on a granular level and direct them to take into consideration the locations of customers actually being served by competitors, the variation in factors affecting competitors' ability to serve each group of customers, and competitors' ability to target and serve specific markets economically and efficiently using currently available technologies. We make clear that state commissions cannot define a market as encompassing an entire state and that they should not define the market so narrowly that a competitor serving that market alone would not be able to take advantage of available scale and scope economies from serving a wider market.



variation in factors affecting competitors' ability to serve each group of customers,<sup>1538</sup> and competitors' ability to target<sup>1539</sup> and serve specific markets economically and efficiently using currently available technologies. While a more granular analysis is generally preferable, states should not define the market so narrowly that a competitor serving that market alone would not be able to take advantage of available scale and scope economies from serving a wider market. State commissions should consider how competitors' ability to use self-provisioned switches or switches provided by a third-party wholesaler to serve various groups of customers varies geographically and should attempt to distinguish among markets where different findings of impairment are likely. The state commission must use the same market definitions for all of its analysis.<sup>1540</sup>

496. Thus, for example, a state commission may choose to consider how UNE loop rates vary across the state, how retail rates vary geographically, how the number of high-revenue customers<sup>1541</sup> varies geographically, how the cost of serving customers varies according to the size of the wire center and the location of the wire center, and variations in the capabilities of wire centers to provide adequate collocation space and handle large numbers of hot cuts. We recognize that many states have implemented varied administrative tools to distinguish among certain markets within a state on a geographic basis for other purposes including retail ratemaking, the establishment of UNE loop rate zones, and the development of intrastate universal service mechanisms. If a state determines, after considering the factors just described, that these already-defined markets would be appropriate to use in this context as well, it may choose to use these market definitions.

The FCC's repeated use of the word "granular" cannot be ignored. It is clear from reading the TRO that the FCC favors a granular geographic market, and the only lower limit is that it should not be so small that "a competitor serving that market alone would not be able to take advantage of available scale and scope economies from serving a wider market." In other words, the market should be the smallest area in which economies of scope and scale are obtainable. There

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<sup>1539</sup> For example, competitors often are able to target particular sets of customers, or customers in particular wire centers or rate zones.

<sup>1540</sup> Therefore the market definitions used for the analysis of the triggers must also be used for the second step of the analysis, if the triggers are not satisfied.

<sup>1541</sup> These include, for example, business customers, as well as those residential customers likely to take vertical features and ancillary services such as data and voice mail service.

are three fully-developed geographic market proposals<sup>2</sup> on the record in this case, and only two of them can plausibly be considered granular: the wire center and the exchange. The third proposal, the MSA, simply does not meet the FCC's definition. It is not at all granular, and it does not take into account the factors the FCC discussed at paragraph 496:

how the number of high-revenue customers [footnote omitted] varies geographically, how the cost of serving customers varies according to the size of the wire center and the location of the wire center, and variations in the capabilities of wire centers to provide adequate collocation space and handle large numbers of hot cuts.

Of the two proposals that do advance a granular market definition, the wire center proposal is arguably too granular: there is no credible evidence that a competitor serving a single wire center could take advantage of economies of scale and scope. The exchange proposal does not suffer from this flaw, and in fact is the one proposal on the record that best meets the FCC's directives on defining a market area. For example:

- A competitor could take advantages of economies of scale and scope when serving a single exchange.
- Defining the market as an exchange will allow the Commission to take into consideration the locations of customers actually being served (if any) by competitors.

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<sup>2</sup> The three fully-developed proposals are the Metropolitan Statistical Areas (MSAs), wire centers, and exchanges. The Commission-created Metropolitan Calling Areas in the St. Louis, Kansas City, and Springfield regions were discussed as a possibility during the course of the Phase I evidentiary hearing, but there was no prefiled testimony detailing the use of MCAs, and no party affirmatively supported them. There was also some testimony about the use of Local Access and Transport Areas (LATAs), but the affirmative evidence in support of LATAs was high-level and superficial, and much of the evidence concerning LATAs simply serves to point out the shortcomings of other proposals. The Commission will not discuss MCAs and LATAs in any great detail; the flaws found in the MSA proposal are found in the MCA and LATA proposals as well.

- Defining the market as an exchange will allow the Commission to take into consideration the variation in factors affecting competitors' ability to serve each group of customers.
- Defining the market as an exchange will allow the Commission to take into consideration how competitors' ability to use self-provisioned switches or switches provided by a third-party wholesaler to serve various groups of customers varies geographically.
- Defining the market as an exchange will allow the Commission to take into consideration how retail rates vary geographically.
- The FCC recognizes that states have implemented varied administrative tools to distinguish among certain markets within a state on a geographic basis for other purposes including retail ratemaking. This Commission has used the exchange as the geographic area for retail ratemaking, for the determination of the existence of competition, for the determination of whether community of interest exists for expanded calling scopes, and for other purposes. The TRO provides that: "If a state determines ... that these already-defined markets would be appropriate to use in this context as well, it may choose to use these market definitions."

The Commission therefore concludes that using exchanges as the geographic markets best meets the FCC's directives, and will order the parties to present their Phase II testimony on that basis.

Enterprise Market Cutoff:

The FCC's directives on this issue are found primarily at paragraph 497:

497. For purposes of the examination described here, mass market customers are analog voice customers that purchase only a limited number of POTS lines, and can only be economically served via DS0 loops. Some mass market customers (i.e., very small businesses) purchase multiple DS0s at a single location. The previous Commission determined that incumbent LECs that make the EEL combination available are not obligated to provide unbundled local circuit switching to requesting carriers for serving customers with four or more DS0 loops in density zone one of the top fifty MSAs.<sup>1542</sup> The previous Commission found that under such circumstances, lack of access to unbundled local circuit switching would not impair requesting carriers in these specific areas.<sup>1543</sup> At some point, customers taking a sufficient number of multiple DS0 loops could be served in a manner similar to that described above for enterprise customers – that is, voice services provided over one or several DS1s,<sup>1544</sup> including the same variety and quality of services and customer care that enterprise customers receive. Therefore, as part of the economic and operational analysis discussed below, a state must determine the appropriate cut-off for multi-line DS0 customers as part of its more granular review. This cross over point may be the point where it makes economic sense for a multi-line customer to be served via a DS1 loop. We expect that in those areas where the switching carve-out was applicable (i.e., density zone 1 of the top 50 MSAs), the appropriate cutoff will be four lines absent significant evidence to the contrary. We are not persuaded, based on this record, that we should alter the Commission’s previous determination on this point.<sup>1545</sup> Accordingly, we authorize the states, within nine months of the effective date of this Order, to determine the appropriate cross over point.<sup>1546</sup>

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<sup>1542</sup> *UNE Remand Order*, 15 FCC Rcd at 3822-31, paras. 276-98.

<sup>1543</sup> *Id.*

<sup>1544</sup> The evidence in the record indicates that it may be viable to aggregate loops at a customer location and provide service at a DS1 capacity or higher. Specifically, if a customer has enough lines to justify the expense of purchasing multiplexing equipment and a high-capacity line, it makes sense to aggregate the customer’s loops at the customer’s premises, which avoids the need for hot cuts at the incumbent LEC’s central office.

<sup>1545</sup> Because the previous carve out only applied where “new” EELs were made available and because this Commission allowed state commissions to require switching to be unbundled even in areas where the carve-out test was met, it appears that the four-line carve-out was adhered to in very few areas in the country. SBC Reply at 30; BellSouth NERA Reply Decl. at 51-52. As part of their analysis, we expect states to make a finding of whether or not the carve out was in effect.

<sup>1546</sup> Commissioner Abernathy claims that our decision not to preserve the previous Commission’s four-line carve-out represents a “potentially massive expansion” of unbundled switching. *Commissioner Abernathy Statement* at 8 n.27. This claim makes no sense. If a state finds that the appropriate cut-off for distinguishing enterprise from mass market customers in density zone 1 of the top 50 MSAs is four lines, there will be no more unbundled switching available than there was under the previous carve-out. Indeed, since the previous carve-out was conditioned on the

The FCC essentially lays out two options for determining the cutoff: 1) the point where it makes economic sense for a multi-line customer to be served via a DS1 loop; or 2) the “carve-out” exception of four lines, where that carve out was in effect. In Missouri, there is no evidence that the carve out was ever put in effect, and plenty of evidence that it was not.<sup>3</sup> Based on the evidence of record, the Commission finds that the carve out was not in effect.

Having made this finding, the carve-out number of four lines becomes irrelevant, and the Commission’s only choice is the economic analysis. The purpose of this analysis is to determine the point at which it makes economic sense for a multi-line customer to be served with a DS1 loop. The only witness that presented a credible analysis to this effect was Sprint witness Maples. Mr. Maples’ analysis demonstrates that it is economical to serve a customer with ten or fewer DS0 lines; at eleven DS0s or more, it is more economical to serve that customer with a DS1 line. As Sprint points out in its brief, this analysis is clear, straightforward, and objective. Based on this analysis, the Commission concludes that customers served with ten or fewer DS0 loops at a particular location are mass-market customers.

### **IT IS THEREFORE ORDERED:**

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availability of EELs and appears to have actually been in effect in very few areas of the country, *see supra* note 1545, setting the cut-off at an unconditional four lines would result in more customers being treated as enterprise customers subject to our finding of no impairment. If, on the other hand, a state finds based on record evidence that a cut-off of more than four lines is appropriate, more multi-line customers will be treated as mass market customers. But in no way will this result in an “expansion” of unbundled switching. To the contrary, as Commissioner Abernathy points out, “dozens of CLECs serve business customers of such size using their own switches.” *Commissioner Abernathy Statement* at 8 n.27. Such widespread deployment of competitive switches would be considered under our mass market triggers. In such markets, then, it is more likely that there will be a finding of no impairment for the entire market, leading to significantly less unbundled switching than was available under the previous four-line carve-out.

<sup>3</sup> Witness Fleming testified that the carve-out was “applicable” because it could have been put in effect, even though it was not. This is sophistry; if the FCC had meant for state commissions to use the four line carve-out everywhere it could have been put into effect whether or not it was actually in effect, it would **not have been concerned with** whether the carve-out was adhered to, and it would not have directed state commissions to make a finding as to whether it was in effect.

1. That, for the purposes of conducting the impairment analysis in Phase II of this proceeding, the appropriate geographic market is the exchange.
2. That, for the purposes of conducting the impairment analysis in Phase II of this proceeding, a mass market customer is defined as a customer with ten or fewer DS0 lines at a particular location.
3. That this order shall become effective on February 24, 2004.

**BY THE COMMISSION**

**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

(S E A L)

Gaw, Ch., and Clayton, CC., concur  
Murray, C., dissents, dissenting opinion attached

Mills, Deputy Chief Regulatory Law Judge

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of a Commission Inquiry into    )  
the Possibility of Impairment without        )  
Unbundled Local Circuit Switching When    )  
Serving the Mass Market                        )

**Case No. TO-2004-0207**

**Dissenting Opinion of Commissioner Murray**

I respectfully dissent from the result reached by the majority. I believe that the Metropolitan Statistical Areas are the appropriate geographic area, and that the DS0 cutoff should be four DS0 lines.

MSAs, by definition, have a high degree of integration with a recognized population nucleus and recognized economic linkages between urban cores and outlying, integrated areas. In short, they **are** markets. The majority's decision to use exchanges as the geographic market areas does not comply with the FCC's rules. An exchange, which in most instances is equivalent to a wire center, is simply too small for a competitor serving that area alone to be able to take advantage of scale and scope economies.

MSAs best meet the FCC's criteria for a geographic market because CLECs are actually serving Missouri mass market customers throughout the MSA; there is little variation across the MSAs in factors that might substantively affect a competitor's ability to serve mass market customers; and where CLECs have entered an MSA using their own switches, they have the ability to use them to serve mass market customers in most, if not all, of the MSA if they choose.

I also disagree with the majority on the appropriate DS0 cutoff. The FCC established a four-DS0 default cutoff in areas where the switching carve out was applicable (i.e., density Zone 1 of the top 50 MSAs). SBC Missouri's witness Gary Fleming analysis showed that it would be

economic and efficient for a CLEC to use a DS1 to serve small business customers that have as few as four DS0 lines.

Furthermore, the analyses proposed by Sprint and AT&T (and accepted by the majority) are flawed because they fail to take into account the increased revenue opportunities, particularly those from providing data services, that come from serving a customer over a DS1 loop rather than multiple DS0s.

For the foregoing reasons, I dissent from the majority opinion.

Respectfully submitted,

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Connie Murray  
Commissioner

Dated at Jefferson City, Missouri,  
on this 24<sup>th</sup> day of February, 2004.



**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Investigation of the State of       )  
Competition in the Exchanges of Southwestern Bell )       **Case No. TO-2001-467**  
Telephone Company.   )

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**REPORT AND ORDER**

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**Issue Date:**                       **December 27, 2001**

**Effective Date:**                       **January 6, 2002**

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Investigation of the State of       )  
Competition in the Exchanges of Southwestern Bell )       **Case No. TO-2001-467**  
Telephone Company.   )

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**REGULATORY LAW JUDGE:**    **Nancy Dippell, Senior Regulatory Law Judge.**

## **REPORT AND ORDER**

This order presents the Commission's determination of which Southwestern Bell Telephone Company services in which exchanges should be designated competitive services, if any. The Commission finds that where effective competition exists, Southwestern Bell's services should be designated as competitive. The Commission finds that effective competition exists: (1) in the Kansas City and St. Louis exchanges for core business switched services, business line-related services, directory assistance services for business customers, and the operator services of Busy Line Verification and Busy Line Interrupt for business customers; (2) in the Harvester and St. Charles exchanges for residential access line services, residential access line-related services, Optional Metropolitan Calling Area service, directory assistance services for residential customers, and Busy Line Verification and Busy Line Interrupt for residential customers; and (3) in all of Southwestern Bell's exchanges for Common Channel Signaling/Signaling System 7 (SS7) and Line Information Database (LIDB) services.

The Commission also concludes that certain services that had been declared transitionally competitive in Case No. TO-93-116,<sup>5[1]</sup> are now competitive services in accordance

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<sup>5[1]</sup> *In the Matter of Southwestern Bell Telephone Company's application for classification of certain services as transitionally competitive*, Case No. TO-93-116, *Report and Order*, effective December 21, 1992.

with Section 392.370, RSMo 2000,<sup>6[2]</sup> in all of Southwestern Bell's Missouri exchanges. The services are intraLATA private line/dedicated services, intraLATA toll services, Wide Area Telecommunications Services (WATS) and 800 services, special access services, station-to-station, person-to-person, and calling card services. In addition, the Commission determines that Section 392.200.8, authorizes Southwestern Bell to price high capacity exchange access line services and Plexar services on an individual customer basis. Finally, the Commission, determines that Local Plus and switched access services are not subject to effective competition.

### **Procedural History**

This case was established on March 13, 2001, in response to the Staff of the Missouri Public Service Commission's Motion to Open Case. In its motion, Staff requested that the Commission open a new case to investigate the status of competition in Southwestern Bell's exchanges pursuant to Section 392.245.5. Under that section, the Commission must determine whether effective competition exists for each telecommunications service of an incumbent local exchange company (ILEC) in each of the company's exchanges where an alternative local exchange telecommunications company has been certified. The Commission is required to make this review no later than five years following the first certification of an alternative provider. Because alternative local exchange telecommunications companies are currently certified in every exchange in which Southwestern Bell operates, the Commission established this case to review the status of competition in all of Southwestern Bell's exchanges.

Southwestern Bell, Staff, the Office of the Public Counsel, and 70 alternative local exchange telecommunications companies were made parties to this case. The Commission held an evidentiary hearing beginning on September 24, 2001. After the conclusion of the hearing,

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<sup>6[2]</sup> All references are to the Revised Statutes of Missouri (RSMo), the revision of 2000, unless otherwise noted.

the Commission dismissed many of the alternative local exchange companies that did not appear at the hearing.

### **Post-Hearing Exhibit**

On October 9, 2001, Southwestern Bell filed post-hearing Exhibit 29. Exhibit 29 is a statement of the rate increases and decreases that Southwestern Bell has implemented since coming under price cap regulation in 1997. The Commission directed that responses and objections to the exhibit must be filed no later than ten days from the submission of the exhibit. There were no objections filed. Therefore, the Commission will admit Exhibit 29 into the record.

### **Findings of Fact and Conclusions of Law**

The Commission has considered all of the competent and substantial evidence upon the whole record and makes the following findings of fact and conclusions of law. The Commission in making this decision has considered the positions and arguments of all of the parties. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

### **General Findings of Fact**

Southwestern Bell is a large incumbent local exchange carrier subject to price cap regulation under Section 392.245. Communications Cable-Laying Company, d/b/a Dial US, was the first alternative local exchange telecommunications company to be granted a certificate in a Southwestern Bell exchange. Dial US's certificate became effective on December 31, 1996. However, no alternative local exchange telecommunications company has actually *provided*

basic local telecommunications service in any of Southwestern Bell's exchanges for a period of five years.

The Commission has classified numerous alternative local exchange companies as competitive carriers when approving each company's basic local certification. Numerous interexchange telecommunications companies have also been classified as competitive carriers in Missouri.

### **General Conclusions of Law**

The Commission has jurisdiction in this case pursuant to its general authority over Southwestern Bell as a telecommunications company under Section 386.250, and pursuant to its specific responsibilities under the price cap statute, Section 392.245.

Under Section 392.245.2, a large ILEC becomes subject to price cap regulation when an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service, and is providing such service, in any part of the large ILEC's service area. On March 21, 1997, Southwestern Bell asked the Commission to determine that it was subject to price cap regulation pursuant to Section 392.245.2. In Case No. TO-97-397,<sup>7[3]</sup> the Commission approved Southwestern Bell as a price cap regulated company.

Unlike a price cap company, alternative local exchange companies and IXC's, which are classified as competitive, have the authority to increase or decrease their prices on short notice to the Commission without the need of providing cost support for the change.<sup>8[4]</sup> This flexibility allows them to modify their offerings to meet customer needs, or to respond to the offerings of their competitors in the local market.

### **Burden of Proof**

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<sup>7[3]</sup> *In the Matter of the Petition of Southwestern Bell Telephone Company for a Determination that it is Subject to Price Cap Regulation Under Section 392.245 RSMo (1996)*, Case No. TO-97-397.

Which party has the burden of proof became an issue in this case. A finding under Section 392.245.5, that effective competition exists for a particular service in an exchange would authorize Southwestern Bell to increase or to decrease its rates in response to competition. Currently, Southwestern Bell is subject to a price cap under Section 392.245. Thus, Southwestern Bell may adjust its rates downward, but there is a statutory limit on any increased prices.

The Staff and other parties argued that because Southwestern Bell would be the beneficiary of a change in the status quo, Southwestern Bell bears the burden of persuasion.<sup>9[5]</sup> Southwestern Bell argues that the presumption of the statute is that there is effective competition, unless other parties produce evidence that there is not effective competition.

Section 392.245.5, provides in part:

Each telecommunications service of an incumbent local exchange telecommunications company shall be classified as competitive in any exchange in which at least one alternative local exchange telecommunications company has been certified under section 392.455 and has provided basic local telecommunications service in that exchange for at least five years, unless the commission determines, after notice and a hearing, that effective competition does not exist in the exchange for such service. The Commission shall, from time to time, on its own motion or motion by an incumbent local exchange telecommunications company, investigate the state of competition in each exchange where an alternative local exchange telecommunications company has been certified to provide local exchange telecommunications service and shall determine, no later than five years following the first certification of an alternative local exchange telecommunications company in such exchange, whether effective competition exists in the

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<sup>8[4]</sup> *Id.*

<sup>9[5]</sup> 29 Am. Jur. 2d, Evidence § 158.



exchange for the various services of the incumbent local exchange telecommunications company.

In the first sentence set out above, there is a presumption of effective competition. In that sentence, Southwestern Bell must be classified as competitive “unless the commission determines . . . that effective competition does not exist.” This sentence is not applicable in this case. The presumption of competition controls only where a competitor of Southwestern Bell has been both certified and has been providing service for at least five years. No competitor has been certified and providing service for a period of at least five years.

The second sentence of Section 392.245.5, set out above, does not include the presumption. Instead, it says that the Commission “shall determine . . . whether effective competition exists . . .” The Commission can only make such an affirmative finding based on competent and substantial evidence.<sup>10[6]</sup> Consequently, the debate between the witnesses and parties regarding who bears the burden of proof is moot. Regardless of which party bears the burden of proof, absent competent and substantial evidence of effective competition the Commission cannot find that it exists.

Generally, the party seeking relief from the Commission bears the burden of proof.<sup>11[7]</sup> The burden of proof remains upon the party asserting the affirmative of the ultimate issue throughout a proceeding.<sup>12[8]</sup> In order for the Commission to make that determination it must have evidence of effective competition. Since Southwestern Bell is the only party advocating that position, the burden of proof and, therefore, the burden to present competent and substantial evidence, falls to Southwestern Bell.

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<sup>10[6]</sup> See, e.g., *State ex rel. Rice v. PSC*, 220 S.W.2d 61, 64 (Mo. 1949).

<sup>11[7]</sup> See Section 386.430; *State ex rel. Rice v. PSC*, 220 S.W.2d 61, 66 (Mo. 1949).

<sup>12[8]</sup> See, e.g., *Been v. Jolly*, 247 S.W.2d 840, 854 (Mo. 1952).

## **Effective Competition**

What constitutes effective competition is also an issue. The legislature left the determination of what is effective competition to the Commission. The statutes do not define effective competition, but rather Section 386.020(13), lists the following factors that the Commission should consider in determining effective competition:

- (a) The extent to which services are available from alternative providers in the relevant market;
- (b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions;
- (c) The extent to which the purposes and policies of Chapter 392, RSMo, including the reasonableness of rates, as set out in Section 392.185, RSMo, are being advanced;
- (d) Existing economic or regulatory barriers to entry; and
- (e) Any other factors deemed relevant by the Commission and necessary to implement the purposes and policies of Chapter 392, RSMo.

At issue was the determination of how much, if any, weight should be given to competition provided by unregulated services such as wireless, cable, Internet, fixed satellite, and customer premises equipment manufacturers.

Sprint and Southwestern Bell argued that the Commission should consider services beyond those provided by certificated telecommunications providers. They argue that, if the legislature had meant to limit the Commission's evaluation to only regulated services, it would have included the more limited term "telecommunications service" instead of the term "services." Staff argues that because the term "service" is defined in Section 386.020(47), using the terms "devoted to the public purposes," that this should be considered synonymous with "regulated service." Staff also argues that customer premises equipment and wireless service are specifically excluded from the definition of "telecommunications service." Public Counsel

agrees with Staff, but it reasons that “services” used in Section 386.020(13), regarding effective competition is equivalent to the term “telecommunications services” as defined in Section 386.050(53).

The determination of what is effective competition does not necessarily turn on the definition of the term “service”. Nor does it turn on whether competitors that are not regulated by the Commission are considered. Given the final factor of Section 386.020(13), the Commission’s analysis must include *all relevant* factors. As stated by several witnesses, including Dr. Aron, Mr. Price, Ms. Meisenheimer, and Mr. Voight, no single factor can be determinative.

The purposes and policies of Chapter 392 as set out in Section 392.185 (as referenced in Subsection 386.020(13)(c)) are as follows:

- (1) Promote universally available and widely affordable telecommunications services;
- (2) Maintain and advance the efficiency and availability of telecommunications services;
- (3) Promote diversity in the supply of telecommunications services and products throughout the state of Missouri;
- (4) Ensure that customers pay only reasonable charges for telecommunications service;
- (5) Permit flexible regulation of competitive telecommunications companies and competitive telecommunications services;
- (6) Allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest;
- (7) Promote parity of urban and rural telecommunications services;
- (8) Promote economic, educational, health care and cultural enhancements; and
- (9) Protect consumer privacy.

When considered in the full context of Sections 392.245.5 and 386.020(13), “effective competition” as used in subsection 5 of the price cap statute refers to competition that is adequate to accomplish the purposes that were previously to have been accomplished by the cost floors and maximum prices and, to produce the intended or expected results, namely accomplishing the “purposes and policies of chapter 392, RSMo, including the reasonableness of rates, as set out in section 392.185,” over a sustained period running up to five years into the future. As witnesses such as Dr. Aron testified, this means that “effective competition” is competition that exerts sustainable discipline on prices and moves them to the competitive level of true economic cost.

Neither Section 392.245.5, nor Section 386.020(13), require any quantitative market share loss test to determine whether effective competition exists for Southwestern Bell’s services in Missouri. While specific market share thresholds should not be utilized to determine whether or not Southwestern Bell faces effective competition, it is one factor which the Commission finds particularly determinative of “[t]he extent to which services are available from alternative providers in the relevant market.”

In making its determinations, the Commission has considered all the relevant factors set out in Section 386.020(13), and the purposes of Chapter 392, as set out in Section 392.185. The Commission has also previously set out numerous criteria for determining which competing services are “substitutable.” The Commission held in Case No. TO-93-116 that those criteria should be applied on a case-by-case basis to each service.

The Commission has, for purposes of this case, considered all the possible alternatives telecommunications consumers have as that evidence was presented and, in its

discretion, determined what weight to give to evidence of forms of competition that are not regulated by the Commission.

### **Extent Services Available from Alternative Providers**

Subsection 386.020(13)(a), provides that the first factor which the Commission must consider when determining whether effective competition exists for Southwestern Bell's services is "the extent to which services are available from alternative providers in the relevant market."

The Commission's findings in Case No. TO-99-227<sup>13[9]</sup> are relevant to the Commission's investigation of the status of competition. In that case, the Commission found that alternative local exchange companies are providing service to customers in all of Southwestern Bell's exchanges, and that Southwestern Bell has opened its markets to competition. The Commission also found that competitive local exchange companies (CLECs)<sup>14[10]</sup> were serving approximately 12 percent of the access lines across all of Southwestern Bell's basic local service area. It is undisputed that these CLECs are providing local services and related services to business and residential customers in various Southwestern Bell exchanges, via resale of Southwestern Bell's services, the use of unbundled network elements purchased from Southwestern Bell on a wholesale basis, and the use of the CLECs' own facilities.

These competitors are not, however, providing service equally throughout all of Southwestern Bell's exchanges. Southwestern Bell provides basic local telecommunications in 160 exchanges within the state of Missouri. Competition is greatest in the more urbanized areas. For example, in the St. Louis Principal and MCA-1 and MCA-2 zones, at least 59 CLECs are

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<sup>13[9]</sup> *In the Matter of the Application of Southwestern Bell Telephone Company to Provide Notice of Intent to File an Application for Authorization to Provide In-region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act of 1996.*

<sup>14[10]</sup> CLECs are also alternative local exchange telecommunications companies.

providing service. Fifty-one CLECs are providing service in the Kansas City Principal, MCA-1 and MCA-2 zones. Thirty-seven CLECs are providing service in Southwestern Bell's St. Charles exchange, and 36 CLECs are providing service in Southwestern Bell's Springfield Principal and MCA-1 zone.

Attached to Southwestern Bell witness Thomas Hughes' Surrebuttal Testimony as Schedules 1-1, 1-2 and 1-3 were maps identifying the number of active CLECs competing in each Southwestern Bell exchange throughout Missouri. These maps depict the level of CLEC competition as estimated by Southwestern Bell throughout its Missouri exchanges. In his Surrebuttal Testimony, Mr. Hughes also identified, by exchange, the total lines served by Southwestern Bell, and its estimated minimum number of lines served by CLECs.<sup>15[11]</sup>

Mr. Hughes' testimony demonstrates that competitors are providing local service in the less urbanized areas. After a review of the highly confidential information provided by Mr. Hughes, including the percent of market share lost by Southwestern Bell to its competitors in each exchange, the Commission finds that with the exception of two exchanges, alternative local exchange telecommunications companies are providing less than a substantial percentage of the residential local service in each Southwestern Bell exchange. Also, the majority of the service being provided in these areas is not CLEC-owned facilities-based service.

The highly confidential evidence contained in Mr. Hughes' testimony also shows that in most of Southwestern Bell's exchanges, alternative local exchange telecommunications companies have captured less than a substantial percentage of the business local service market. On the other hand, the evidence shows that in some of the exchanges, alternative local exchange telecommunications companies have captured a substantial market share of business local service. The Commission finds, however, that even in the exchanges where market share is

substantial, without further substantial evidence of the effect of competition, market share alone is not sufficient for the Commission to find that effective competition exists.

The Commission finds that the lines identified as CLEC lines by Mr. Hughes represent only an estimate, and therefore, CLEC market share may be greater than reported in Mr. Hughes' Schedules. The reason for this is that Southwestern Bell should be able to accurately estimate the number of access lines when a CLEC is reselling Southwestern Bell's service and when a CLEC purchases unbundled network elements from Southwestern Bell. Additionally, Southwestern Bell can identify the number of E-911 listings that CLECs place in 911 databases,<sup>16[12]</sup> but as Mr. Hughes and Dr. Aron explain in their testimony, the number of CLEC E-911 listings may understate the number of access lines served by facilities-based CLECs. For example, only outbound lines have 911 listings associated with them. From the evidence presented, however, the Commission cannot determine how many more, if any, access lines in each particular exchange are being served. The Commission finds that Southwestern Bell's estimates for the minimum number of access lines being served by competitors for both business and residential customers are reasonable estimates reflecting the minimum CLEC business market share and residential market share throughout Southwestern Bell's exchanges.

**Extent of Services Functionally Equivalent or Substitutable at Comparable Rates, Terms, and Conditions**

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<sup>15[11]</sup> Hughes Surrebuttal, Schedules 4-1, 4-2, 4-3 and 4-4 have been designated as "highly confidential."

<sup>16[12]</sup> There were allegations that Southwestern Bell's use of E-911 information was a violation of Commission orders and confidentiality clauses between some of the parties in interconnection agreements. The Commission did not base its decision solely on any one factor in making its determinations in this case. The Commission also finds that it must consider all relevant factors in determining whether or not "effective competition" exists. The Commission finds that it does not have sufficient evidence to determine if these allegations are correct and if sanctions are appropriate. The Commission concludes that if Southwestern Bell has indeed violated Commission orders by using E-911 information in an inappropriate manner, the offended party or the Commission's Staff should seek the appropriate remedy in a formal complaint proceeding before the Commission, or other appropriate jurisdiction.

The second factor that the Commission must consider in determining effective competition is “the extent to which these services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions.”<sup>17[13]</sup> The parties presented argument and testimony about whether services such as wireless carriers, cable TV providers, Internet service providers, fixed satellite providers, and customer premises equipment manufacturers constitute “equivalent or substitutable service.” The Commission finds that it is appropriate for the Commission to consider these services when evaluating all the relevant factors of effective competition. The Commission finds, however, that even if it were to find that such services are equivalent and substitutable, the testimony of Southwestern Bell’s witnesses was not persuasive as to the existence of effective competition from competitors that are not regulated by the Commission because the witnesses had very little Missouri-specific information and based the majority of their testimony on national publications, general trends in the communications industry, and unverified sources. Southwestern Bell’s witnesses provided very little evidence that competition has had any specific impact on Southwestern Bell’s prices or its pricing and product policies, strategies or plans. Therefore, as described below, the Commission finds that Southwestern Bell has not provided substantial evidence that establishes that, for *all* of Southwestern Bell’s regulated service offerings, there are alternative providers who are providing functionally equivalent or substitutable services throughout each of Southwestern Bell’s Missouri exchanges, at comparable rates, terms and conditions.

### **The Extent to Which the Purposes and Policies of Chapter 392 are Advanced**

The third factor that the Commission is required to consider in connection with its evaluation of whether effective competition exists is “[t]he extent to which the purposes and policies of Chapter 392, RSMo, including the reasonableness of rates, as set out in

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<sup>17[13]</sup> Subsection 386.020(13)(b).



Section 392.185, RSMo, are being advanced.”<sup>18[14]</sup> The purposes of Chapter 392 have been set out above. Section 386.020(13), clearly sets apart the purpose of ensuring “that customers pay only reasonable charges for the telecommunications service” for the Commission to consider in determining whether there is effective competition. The Commission finds that full and fair competition acts as a substitute for regulation by exerting discipline on prices and moving those prices toward economic cost. Thus, customers benefit from competition because of the competing companies’ ability to quickly adapt to a changing marketplace. The customers also benefit because they are assured that the prices are reasonable because they are near cost.

#### **Existing Economic or Regulatory Barriers to Entry**

The fourth factor is consideration of the “[e]xisting economic or regulatory barriers to entry.”<sup>19[15]</sup> The number of companies that have become certificated and have approved tariffs is relevant to analyzing the barriers to entry and the overall status of competition. Southwestern Bell presented evidence of many CLECs that have certificates and tariffs that authorize them to provide service in all of Southwestern Bell’s Missouri exchanges. The Commission finds that the evidence presented by Southwestern Bell in the form of a count of the number of CLECs or IXC’s certified or tariffed in the state or in any particular exchange is evidence of competition; however, the mere existence of such “paper competition” by itself does not persuade the Commission that effective competition exists.

Southwestern Bell’s evidence leads the Commission to conclude that the availability of resale and unbundled network elements, including combinations of unbundled network elements, provide effective ways for CLECs to enter the market with little capital investment. Given the multitude of companies providing services, it is clear that the regulatory barriers that

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<sup>18[14]</sup> Subsection 386.020(13)(c).

<sup>19[15]</sup> Subsection 382.020(13)(d).

once prevented competitors from offering alternatives in the marketplace are disappearing. However, for most of Southwestern Bell's services in most of its exchanges, very little evidence was presented to persuade the Commission that alternative providers are actually offering services that are functionally equivalent or substitutable for Southwestern Bell's services at comparable rates, terms and conditions. The Commission finds that Ms. Meisenheimer's testimony regarding her investigation into which competitive companies are actually providing services in particular exchanges is more persuasive evidence of effective competition, or the lack thereof in a particular exchange.

The Commission's decision in Case No. TO-99-227, is also relevant to the analysis of the existing regulatory barriers to entry. The Commission determined in that case, that Southwestern Bell had complied with Section 271 of the federal Telecommunications Act of 1996, and that Southwestern Bell's local markets were *open* to competition. This finding is not equivalent, however, to a finding that effective competition exists. Southwestern Bell's own witnesses agreed with this conclusion.

Alternative local exchange telecommunications companies may experience barriers to entering the local exchange market due to current economic conditions, including limited access to capital and the current retail rate structures of ILECs. Although economic conditions and regulatory proceedings generally do not constitute insurmountable barriers to entry, AT&T presented testimony that such barriers may impede the ability of alternative local exchange telecommunication companies to enter the market, to expand their operations, and to provide competitive alternatives to Southwestern Bell. The Commission found this testimony persuasive with regard to current alternative local exchange company plans for continued service and expansion in Southwestern Bell exchanges.

**Any Other Relevant Factors Necessary to Implement the Purposes and Policies of Chapter 392**

The fifth factor the Commission must consider is “[a]ny other factors deemed relevant by the commission and necessary to implement the purposes and policies of Chapter 392.”<sup>20[16]</sup> Other factors that the Commission deems relevant and necessary in this case are discussed below.

The Commission considers alternative communications that are not regulated by the Commission, such as e-mail, cable broadband, and mobile phones as “other factors” under Subsection 386.020(13)(e) that might be “relevant . . . and necessary to implement the purposes and policies of Chapter 392.” However, the evidence did not persuade the Commission that the generalized presence of such alternative communications throughout the state constitutes, in the absence of CLEC-owned, facilities-based competition, effective competition to Southwestern Bell’s telecommunications services.

Southwestern Bell’s witness Thomas Hughes commented that additional pricing flexibility would “increase Southwestern Bell’s ability to restructure services and offer value-added packaging.” He observed that “Southwestern Bell has had only limited price changes for most of its services since 1984.” He testified Southwestern Bell has no current plans to change rates. He supplied Exhibit 29, which provides information on recent Southwestern Bell price changes, including changes mandated by the price cap statute. There was no testimony that any specific changes were made as a result of competition or explaining the specific analysis that resulted in such changes.

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<sup>20[16]</sup> Subsection 386.020(13)(e).

### **Issues as Presented by the Parties**

Section 392.245.5, requires that the Commission make a determination for each service in each exchange of the ILEC. Because of the large number of services and exchanges of the ILEC, the parties grouped the services into categories and presented 17 groups of services to the Commission for determination as to the existence of effective competition. The parties agreed to consider Southwestern Bell's services in these categories. The Commission has adopted this method of categorization for its review of the status of competition in Southwestern Bell exchanges.

Southwestern Bell provides the following telecommunications services in its exchanges:

Core business switched services;

Business line-related services;

High capacity exchange access line services;

Plexar services;

IntraLATA private line/dedicated services;

Residential access line services;

Residential access line-related services;

IntraLATA toll services;

Local Plus service;

Optional Metropolitan Calling Area service;

Wide Area Telecommunications Services and 800 services;

Special access services;

Switched access services;

Common Channel Signaling/Signaling System 7 services;

Line Information Database services;

Directory Assistance (DA) services; and

Operator services (OS).

The parties also included an additional issue for Commission determination. That issue was:

In each exchange served by Southwestern Bell, which if any alternative local exchange telecommunications company has been certified under Section 392.455 and has provided basic local telecommunications service in that exchange for at least five years (or if none, what is the longest period of time that a certified alternative local exchange company has provided basic local telecommunications service in that exchange)?

The Commission has determined that no alternative local exchange telecommunications company has been certified and providing service in any of Southwestern Bell's exchanges for a period of five years. As to the parenthetical issue, for the purposes of this case the Commission need not make that determination.

## **Findings of Fact and Conclusions of Law**

### **Applicable to Specific Issues**

**Issue 1:** In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's core business switched services be classified as competitive pursuant to Section 392.245.2?

- **Findings of Fact**

Southwestern Bell's core business switched services include the various basic business access services, including exchange access lines, analog trunks, and Basic Rate ISDN (DigiLineK Service) that Southwestern Bell's business customers use to make and receive calls over the public switched telephone network. Southwestern Bell's basic business exchange access line is a line that provides customers the ability to make and receive telephone calls. These lines can be used to make voice telephone calls or to transmit data to or from the public switched telephone network. Analog trunks are used to connect the central office to a private branch exchange or key system, located on the customer's premises.

The Commission finds that Southwestern Bell has experienced a substantial market share loss in the St. Louis and Kansas City exchanges for core business services. This market share loss is due to alternative providers providing substitutable or functionally equivalent services to Southwestern Bell's core business switched services in these exchanges. The Commission also finds that there was some evidence presented, although not strong evidence, of competition throughout Southwestern Bell's exchanges from entities not regulated by the Commission. In addition, as Staff's witness testified, there are CLEC-owned facilities, specifically fiber networks, within 1,000 feet of a significant quantity of business and residential customers in those two exchanges.

Southwestern Bell presented evidence showing a similar or higher market share loss for other exchanges; however, the Commission must make the determination of effective competition based on all the relevant factors. The Commission finds that market share alone is not determinative of this issue. However, when market share is considered in conjunction with the evidence of the number of carriers, including resellers, actually providing both resale and facilities-based service in the exchanges, the overwhelming number of carriers certified to do business in the St. Louis and Kansas City exchanges, the comparative longevity of the companies doing business, and CLEC-owned fiber networks, the Commission determines that effective competition exists in those two exchanges.

### **Conclusions of Law**

The Commission finds that a substantial number of business customers are being provided functionally equivalent or substitutable basic local service from widely available CLEC-owned facilities in the St. Louis and Kansas City exchanges. Accordingly, the Commission finds that effective competition exists for Southwestern Bell's core business switched services which are hereby classified as competitive pursuant to Section 392.245, in these two exchanges.

With due consideration to all factors set forth under Section 386.020(13), the Commission finds that Southwestern Bell's core business services in Southwestern Bell's other exchanges do not face effective competition. In particular, the evidence did not establish that a substantial number of business customers were being provided service from widely available CLEC-owned facilities in any of Southwestern Bell's other exchanges.

While the Commission considers resale a form of substitutable service, the mere presence of resellers is not substantial evidence for the Commission to determine that effective

competition exists. Alternative local exchange telecommunications companies that provide service via resale of Southwestern Bell's services are limited in their ability to differentiate their service offerings based on price, because the minimum cost that a reseller incurs to provide service is directly tied to Southwestern Bell's retail rate for the resold service.

**Issue 2: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's business line-related services be classified as competitive pursuant to Section 392.245.5?**

**Findings of Fact**

Line-related or vertical services are services a business customer may add to the customer's business access line and which provide additional functions to that line. Line-related or vertical services are related to core business switched access line services. Examples of line-related services include services such as call waiting, return call, three-way calling, call forwarding, caller I.D., and speed calling. CLECs are the most evident type of competitor for business access line customers, providing business access line services that are substitutable or functionally equivalent to Southwestern Bell's services. In addition to using their own facilities, CLECs use unbundled network elements to provide business access line-related services. CLECs offer their customers the same line-related services as those offered by Southwestern Bell.

The Commission finds that vertical services and custom calling features are inseparable from the underlying basic local service because vertical services and custom calling features are not available to the customer without that customer being provided the basic local service.

The Commission finds that the same facts found with regard to Southwestern Bell's core business services are applicable to its business related services. Thus, when all the factors



of effective competition are considered, the evidence of market share lost, the number of carriers, including resellers, actually providing service both resale and facilities-based services in the exchanges, the large number of carriers certified to do business in the exchanges, the comparative longevity of those companies, and CLEC-owned fiber networks, the Commission determines that effective competition exists for business-related services in the Kansas City and St. Louis exchanges.

Likewise, when considering all the relevant factors, the weight of the evidence is not as great in Southwestern Bell's other exchanges. Therefore, the Commission finds that there is not sufficient evidence to find that business line-related services are subject to effective competition in Southwestern Bell's other exchanges.

### **Conclusions of Law**

The same analysis used to apply the five factors for determining effective competition to Southwestern Bell's core business line-related services is applicable to Southwestern Bell's core business switched services because the two groups of services are closely related, that is, line-related services cannot be provided without first providing the underlying core business service. The Commission has concluded that Southwestern Bell's core business switched services face effective competition from CLECs in the St. Louis and Kansas City exchanges. The Commission concludes that Southwestern Bell's business line-related services also face effective competition in the Kansas City and St. Louis exchanges. Therefore, the Commission finds that Southwestern Bell's business line-related services should be classified as competitive in those two exchanges pursuant to Section 392.245.5.

The Commission did not find that effective competition exists for the core business services in any other exchanges, and for similar reasons find that there is not effective competition for the business line-related services in any other exchange.

**Issue 3: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's high capacity exchange access line services be classified as competitive pursuant to Section 392.245.5?**

**Findings of Fact**

There are generally three types of high capacity exchange access line services offered by Southwestern Bell throughout Missouri. Staff's witness testified that Southwestern Bell's high capacity exchange access services face effective competition in the St. Louis and Kansas City exchanges. Southwestern Bell argues that the Commission should find that all of its exchanges are subject to effective competition with regard to these services. There was no evidence presented that there was effective competition in Southwestern Bell's other exchanges. There was evidence that alternative providers are certificated, but no exchange-by-exchange analysis of the extent of competition, how effective that competition may be, or the rates and terms available.

For the same reasons as Southwestern Bell's core business line services, the Commission finds that in the Kansas City and St. Louis exchanges, Southwestern Bell's high capacity line services are subject to effective competition and should be granted competitive classification.

**Conclusions of Law**

The same analysis used to apply the five factors for determining effective competition to Southwestern Bell's core business related services is applicable to Southwestern Bell's high capacity line services. The Commission concludes that Southwestern Bell's high capacity line-

related services face effective competition in the Kansas City and St. Louis exchanges. Therefore, the Commission finds that Southwestern Bell's high capacity line services should be classified as competitive in those two exchanges pursuant to Section 392.245.5.

The Commission did not find that effective competition exists for the high capacity line services in any other exchanges, and for similar reasons to the core business line services finds that there is not effective competition for high capacity line services in any other exchanges.

Although it is not specifically an issue in this case, Staff asks the Commission to recognize that Southwestern Bell is authorized by Section 392.200.8 to use customer specific pricing for its high capacity line services in all of its exchanges. Section 392.200.8 is a specific exception to the general requirement that regulated telecommunications companies charge the same rate for similarly situated customers. Under this exception, Southwestern Bell is authorized to price its high capacity line services on an individual customer basis. NuVox and others argue that Southwestern Bell's services cannot be subject to price cap regulation and subject to the exception in Section 392.200.8. The Commission concludes, however, that one does not preclude the other. Section 392.245, is a transitional regulatory step of price cap regulation, moving from the more rigid regulation of Section 392.200. Thus, an exception to Section 392.200, can easily be translated into a continuing exception under the less stringent regulation. The Commission concludes that Southwestern Bell can utilize individual customer pricing for its high capacity line services.

**Issue 4: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's Plexar services be classified as competitive pursuant to Section 392.245.5?**

### **Findings of Fact**

Plexar is a central office based communications system that allows business customers to use Southwestern Bell's central office technology instead of purchasing their own switching equipment. The Plexar family of services includes Plexar I, Plexar Express, Plexar II, and Plexar-Custom. A business customer has no capital outlay since Plexar switching equipment is provided, housed, and maintained in Southwestern Bell's central offices. The telecommunications industry often refers to services such as Southwestern Bell's Plexar services as "Centrex".

The Plexar system and station features are changeable by Southwestern Bell, and optionally, with some Plexar offers, by the customer. Plexar service provides basic call processing capabilities, such as call hold, call transfer, and three-way calling. Additionally, some Plexar services also offer advanced voice and data call handling such as basic rate interface and integrated service digital network capabilities.

Southwestern Bell provided testimony about many different types of services and equipment that could be considered competition for Plexar. Southwestern Bell also provided testimony regarding alternative local exchange companies that have approved tariffs to provide a similar type of service. However, Southwestern Bell did not provide any exchange-by-exchange analysis or evidence of companies actually providing this service. Therefore the Commission cannot make a finding of effective competition for this service.

### **Conclusions of Law**

The Commission found no substantial evidence to support a determination that effective competition exists under the five factors set out in Section 386.020(13). The Commission does recognize, however, that Centrex services are subject to individual customer

pricing under Section 392.200.8, in the same manner as high capacity line services. The Commission concludes that Southwestern Bell can utilize individual customer pricing for its Plexar service.

**Issue 5: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's intraLATA private line/dedicated services be classified as competitive pursuant to Section 392.245.5?**

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**Findings of Fact**

Private line services are nonswitched, dedicated circuits, for which Southwestern Bell furnishes the requisite facilities, including channels and network terminating equipment, to enable customers and authorized users to communicate between specified locations within a LATA on a continuous basis. They are most frequently utilized for data transmissions, but are also utilized for transporting voice or integrated data/voice communications in private networks. Private line services include Analog Service; DS0 Service; DS1 Service; DS3 Service; Network Reconfiguration Service; and GigaMAN Service.

The Commission finds that significant competition has existed in the retail intraLATA private line market in Missouri for nearly 15 years. Undisputed evidence shows that many alternative providers, such as AT&T, Sprint, MCI and numerous CLECs offer nonswitched, dedicated private line type services, and the services and functionality they provide are substitutable for or functionally equivalent to Southwestern Bell's private line services. These alternatives, against which Southwestern Bell competes, are either not regulated by the Commission or at least not price regulated in the same manner as Southwestern Bell. In addition to direct competition for traditional private line services, there are many service providers in the marketplace offering a variety of networking solutions, with different technologies, that can meet the same transport needs as Southwestern Bell's private line services.

In Case No. TO-93-116, the Commission found that services provided by interexchange carriers were “equivalent” and completely interchangeable with Southwestern Bell’s private line services. Accordingly, the Commission granted Southwestern Bell’s request for reclassification of private line services to a “transitionally competitive” classification. Given the extensive nature of competition for private line services and the prior determinations of competitive status, the Commission finds that it should confirm competitive classification for Southwestern Bell’s private line services in all of its Missouri exchanges.

### **Conclusions of Law**

Section 392.200.8 authorizes Southwestern Bell, to freely price private line services.

That section states:

Customer-specific pricing is authorized for dedicated, nonswitched, private line and special access services and for central office-based switching systems which substitute for customer premise, private branch exchange (PBX) services, provided such customer-specific pricing shall be equally available to incumbent and alternative local exchange telecommunications companies.<sup>21[17]</sup>

The Commission has recognized the existence of competition in the intraLATA private line market in Case No. TO-93-116. In that case, the Commission found that services provided by interexchange carriers were equivalent and completely interchangeable with Southwestern Bell’s private line services. Accordingly, the Commission granted Southwestern Bell’s request for reclassification of private line services to a transitionally competitive classification.

Under Sections 392.370.1 and 2, a service classified as transitionally competitive automatically becomes classified as competitive three years after such designation unless the

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<sup>21[17]</sup> Section 392.200(8).

Commission affirmatively extends the transitionally competitive status for a specified period. Three years after private line services were declared transitionally competitive (January 10, 1996), the Commission, with Southwestern Bell's agreement, extended the transitionally competitive status for an additional three years (until January 10, 1999). The Commission, however, did not further extend it. Thus, the Commission determines that Southwestern Bell's private line services became classified as competitive on January 10, 1999, by operation of law.

**Issue 6: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's residential access line services be classified as competitive pursuant to Section 392.245.5?**

**Findings of Fact**

Residential access line services are those services that provide basic voice access for residences to the telecommunications network. For residential service, the most typical form of residential access line service is flat rate telephone service. Flat rate service is an exchange service furnished for a specified sum without regard to the amount of use. These lines may be used to make voice telephone calls or to transmit data to or from the public switched network. Residential access line service also includes measured service and message rate service.

The Commission finds that a substantial number of residential customers are being provided functionally equivalent or substitutable basic local service from widely available CLEC-owned cable telephony facilities in the St. Charles and Harvester exchanges. The evidence shows that there are actually 27 CLECs serving residential customers in the Harvester exchange and 31 CLECs serving residential customers in the St. Charles exchange. In addition, Southwestern Bell has lost a substantial market share of residential customers in those exchanges. When considered with all the other factors of effective competition, the Commission finds that most residential customers in these two exchanges have not only the many choices

from resale providers, but also a choice of CLEC-owned, facilities--based providers. The Commission also finds that there was some evidence presented, although not strong evidence, of competition throughout Southwestern Bell's exchanges from entities not regulated by the Commission. These factors lead the Commission to find that Southwestern Bell's residential access line services face effective competition in the Harvester and St. Charles exchanges and should be classified as competitive pursuant to Section 392.245.5 in these two exchanges.

The Commission was not persuaded by Southwestern Bell's evidence of prepaid basic local service as effective competition. Prepaid basic local service requires a customer to pay rates that are many times higher than Southwestern Bell's basic local rate. The increased rate is usually attributable to the customers problematic credit history. The evidence showed that Southwestern Bell is not currently providing prepaid service in Missouri.

Southwestern Bell presented evidence showing a similar or higher market share loss for other exchanges; however, the Commission must make the determination of effective competition based on all the relevant factors. The Commission finds that market share alone is not determinative of this issue. However, when market share is considered in conjunction with the evidence of the number of carriers, including resellers, actually providing service both resale and facilities-based in the exchanges, the large number of carriers certified to do business in the exchanges, the comparative longevity of those companies, and CLEC-owned fiber networks, the Commission determines that effective competition exists in the Harvester and St. Charles exchanges.

### **Conclusions of Law**

The Commission finds that a substantial number of residential customers are being provided functionally equivalent or substitutable basic local service from widely available



CLEC-owned cable telephony facilities in the St. Charles and Harvester exchanges. Accordingly, the Commission finds that effective competition exists for Southwestern Bell's residential access line services in those two exchanges. Those services are hereby classified as competitive pursuant to Section 392.245, in the Harvester and St. Charles exchanges.

With due consideration to all factors set forth under Section 386.020(13), the Commission finds that Southwestern Bell's residential access line services in Southwestern Bell's other exchanges do not face effective competition. In particular, the evidence did not establish that a substantial number of residential customers were being provided service from widely available CLEC-owned facilities in any of Southwestern Bell's other exchanges.

As the Commission has previously found, resale is a competing service. The mere presence of resellers, however, is not substantial evidence for the Commission to determine that effective competition exists.

**Issue 7: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's residential access line-related services be classified as competitive pursuant to Section 392.245.5?**

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**Findings of Fact**

The Commission finds that vertical services and custom calling features are inseparable from the underlying basic local service because vertical services and custom calling features are not available to the customer without that customer being provided the basic local service.

The Commission finds that the same facts found with regard to Southwestern Bell's residential access line services are applicable to its residential access line-related services. Thus, when all the factors of effective competition are considered the Commission determines that

effective competition exists for residential access line-related services in the Harvester and St. Charles exchanges.

Likewise, when considering all the relevant factors, the weight of the evidence is not as great in Southwestern Bell's other exchanges. Therefore, the Commission finds that there is not sufficient evidence to find that residential access line-related services are subject to effective competition in Southwestern Bell's other exchanges.

### **Conclusions of Law**

The same analysis used to apply the five factors for determining effective competition to Southwestern Bell's residential access line services is applicable to Southwestern Bell's residential access line-related services because the two groups of services are closely related, that is, line-related services cannot be provided without first providing the underlying basic residential service. The Commission has concluded that Southwestern Bell's residential access line services face effective competition from CLECs in the Harvester and St. Charles exchanges. The Commission concludes that Southwestern Bell's residential access line-related services also face effective competition in those two exchanges. Therefore, the Commission finds that Southwestern Bell's residential access line-related services should be classified as competitive in those two exchanges pursuant to Section 392.245.5.

The Commission did not find that effective competition exists for the residential access line-related services in any other exchanges, and for similar reasons find that there is not effective competition for the residential access line-related services in those exchanges.

**Issue 8: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's intraLATA services be classified as competitive pursuant to Section 392.245.5?**

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### **Findings of Fact**

IntraLATA toll service furnishes telecommunications between points in different local service areas within the same LATA. It provides a customer with the ability to make a telephone call to someone outside that customer's local calling scope, but within the LATA.

Southwestern Bell requests that its intraLATA toll services be classified as competitive in all Southwestern Bell exchanges based on prior Commission determinations and the extensive nature of competition in the intraLATA toll market. Staff agreed that the Commission should approve a statewide competitive classification for Southwestern Bell's intraLATA toll services. In its Statement of Position, the Office of the Public Counsel also agreed, with the exception of flat-rated interexchange services.

The Commission finds that competition has existed in the intraLATA toll market since July 24, 1986, when the Commission authorized intraLATA toll competition in Missouri.<sup>22[18]</sup> In that case, the Commission found that intraLATA toll competition was in the public interest and would result in new and improved services, lower prices and faster responses to customers' needs.

Currently, there are over 600 interexchange carriers certified to provide intrastate interexchange service in Missouri. These include many that offer both intraLATA and interLATA toll service. The intraLATA toll services provided by AT&T, MCI, Sprint, WorldCom, and other IXC's are equivalent to or substitutable for Southwestern Bell's intraLATA toll service, in that all these services provide customers with the ability to place intraLATA toll calls. The large number of certified IXC's supports Southwestern Bell's contention that customer

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<sup>22[18]</sup> *In the Matter of the Application of the Chinese Chef, Inc. for Certificate of Service Authority to Provide Private Pay Telephone Service within the State of Missouri*, Case No. TO-94-222, et al., *Report and Order*, issued July 24, 1986.

choices are widely available and it reflects the relative ease of entry for firms wishing to enter the intraLATA toll market.

With the implementation of intraLATA presubscription in July 1999, IXC's now offer their customers the ability to make intraLATA toll calls without dialing extra digits. In every Southwestern Bell exchange, there is a minimum of 73 IXC's certified to provide 1+ intraLATA toll services. Some exchanges have up to 140 IXC's. While the number of certificated carriers is not by itself determinative of this issue, based on the large numbers of available IXC's in each Southwestern Bell exchange, it is very apparent that robust competition exists for Southwestern Bell's intraLATA toll services.

In addition to the traditional forms of competition from IXC's and CLEC's, Southwestern Bell customers have several nontraditional choices for intraLATA toll. These include wireless service, prepaid telephone cards, and Internet telephony.

Given the extensive nature of competition for intraLATA toll services and the prior determinations of competitive status, the Commission finds that it should confirm competitive classification for Southwestern Bell's intraLATA toll services in all of its Missouri exchanges.

### **Conclusions of Law**

The Commission recognized the existence of competition in the intraLATA toll market in Case No. TO-93-116. In that case, the Commission found that services provided by interexchange carriers were substitutable with Southwestern Bell's intraLATA toll services. Accordingly, the Commission granted Southwestern Bell's request for reclassification of its toll services to a transitionally competitive classification.

Under Sections 392.370.1 and 2, a service classified as transitionally competitive automatically becomes classified as competitive three years after such designation unless the

Commission affirmatively extends the transitionally competitive status for a specified period. Three years after intraLATA toll services were declared transitionally competitive (January 10, 1996), the Commission, with Southwestern Bell's agreement, extended the transitionally competitive status for an additional three years (until January 10, 1999). The Commission, however, did not further extend it. Thus, intraLATA toll service became classified as competitive on January 10, 1999, by operation of law.

**Issue 9: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's Local Plus services be classified as competitive pursuant to Section 392.245.5?**

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**Findings of Fact**

Southwestern Bell's Local Plus service is an optional one-way expanded calling plan that provides subscribers with flat rate unlimited calling to all customers within the LATA. Southwestern Bell does not pay itself access charges when Local Plus calls terminate to its own customers, but a competitor trying to provide a facilities-based alternative to Local Plus would pay Southwestern Bell access charges for calls terminating to Southwestern Bell's customers. To mitigate this economic barrier to entry, the Commission previously found in Case No. TT-98-351 that "in order to enable customers to obtain this type of service by using the same dialing pattern, the dialing pattern functionality should be made available for purchase to IXC's and CLECs on both a resale and unbundled network element basis."<sup>23[19]</sup> In Case No. TO-2000-667, the Commission determined "that Southwestern Bell had not made its Local

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<sup>23[19]</sup> *In the matter of Southwestern Bell Telephone Company's Tariff Revisions Designed to Introduce a LATA-Wide Extended Area Service (EAS) Called Local Plus, and a One-Way COS Plan*, Case No. TT-98-351, Report and Order issued September 17, 1998, at 39-40.

Plus service available for resale by companies providing service to their customers through the use of UNE's or through the use of their own facilities.<sup>24[20]</sup>

The Commission specifically ordered Southwestern Bell to make its Local Plus service available for resale to companies providing service to their customers through the purchase of switching from Southwestern Bell or through the use of the company's own switch.<sup>25[21]</sup> Southwestern Bell has petitioned the circuit court to review the Commission's Report and Order in Case No. TO-2000-667. Thus, there is no evidence that Southwestern Bell is currently providing Local Plus as directed by the Commission.

The Commission also heard no specific evidence regarding competition for Local Plus service. Southwestern Bell's witness Barbara Jablonski testified that the Local Plus service faces competition from IXCs, CLECs, and other competitors that are not regulated by the Commission. The Commission does not find Ms. Jablonski's testimony persuasive, however, since she did not provide any specific information regarding particular calling plans that are equivalent and substitutable for Local Plus. The Commission finds that without specific evidence of equivalent and substitutable competition and without evidence that Southwestern Bell is making the resale of this service available in accordance with its orders, the risk that predatory pricing may endanger competition remains. Therefore, the Commission concludes that Southwestern Bell cannot be said to face effective competition for Local Plus.

### **Conclusions of Law**

The Commission takes notice of its previous orders regarding the provisioning of Local Plus. The Commission also takes notice that its most recent order in TO-2000-667 is

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<sup>24[20]</sup> *In the Matter of the Investigation into the Effective Availability for Resale of Southwestern Bell Telephone Company's Local Plus Service by Interexchange Companies and Facilities-Based Competitive Local Exchange Companies*, Case No. TO-2000-667, *Report and Order* issued May 1, 2001, at 14.

<sup>25[21]</sup> *Id.* at 14-15.

currently pending upon review by the circuit court. In Case No. TT-98-351, the Commission found that Local Plus was a unique service because it was a hybrid of toll and local service. Because it found Local Plus to be unique, the Commission imposed the requirement that Southwestern Bell make Local Plus available for resale. In Case No. TO-2000-667, the Commission found that Southwestern Bell was not abiding by those original requirements and therefore, that “companies seeking to compete against Southwestern Bell in the Basic Local Service market through use of their own facilities, or through use of unbundled network elements, have been placed at a competitive disadvantage.” The Commission also directed Southwestern Bell to comply with its previous order.

Until the issue regarding the resale of Local Plus is final, the Commission cannot, considering all the relevant factors, make a determination that Southwestern Bell’s Local Plus faces effective competition.

**Issue 10: In Which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's Optional Metropolitan Calling Area services be classified as competitive pursuant to Section 392.245.5?**

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**Findings of Fact**

MCA is an optional interexchange plan available in three distinct areas in Missouri: the St. Louis MCA, the Kansas City MCA and the Springfield MCA. This optional plan provides subscribers with a calling area that includes their respective metropolitan exchange and certain customers in other exchanges where MCA service is also available. The Commission, in Case No. TO-92-306,<sup>26[22]</sup> created MCA service to address customer requests for expanded calling scopes in the areas surrounding the three major metropolitan areas of St. Louis, Kansas City and Springfield. The existing calling scopes were modified to address the changing

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<sup>26[22]</sup> *In the Matter of the Establishment of a Plan for Expanded Calling Scopes in Metropolitan and Outstate Exchanges*, Case No. TO-92-306.

demographics of the metropolitan areas by creating an optional service that expands the local calling scopes for a flat-rated monthly charge.

Southwestern Bell's optional MCA service is not classified as interexchange message telecommunications service. Rather, MCA is similar to basic local telephone service. Southwestern Bell's optional MCA service is very closely related to its corresponding basic local service and, like residential access line-related services, cannot be separated from it for purposes of analyzing whether or not effective competition exists. Accordingly, the Commission finds that Southwestern Bell's optional MCA services face effective competition and should be classified as competitive pursuant to Section 392.245.5 only for residential customers in the St. Charles and Harvester exchanges.

#### **Conclusions of Law**

The Commission concludes that applying the factors contained in Section 386.020(13), Southwestern Bell's optional MCA service faces effective competition only for residential customers in the St. Charles and Harvester exchanges. It also follows that because Southwestern Bell's residential access line services have not been shown to face effective competition in its other exchanges, that its optional MCA services do not face effective competition in its other exchanges either.

**Issue 11: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's Wide Area Telecommunications Services and 800 services be classified as competitive pursuant to Section 392.245.5?**

#### **Findings of Fact**

Wide Area Telecommunications Services includes both 800 service and outward WATS (OUTWATS). 800 service provides the subscribers with the ability to receive incoming intraLATA interexchange calls that are toll-free to the calling party. OUTWATS service



provides subscribers with the ability to place outgoing intraLATA, interexchange calls that are billed on a usage-sensitive basis.

Southwestern Bell requests that its WATS and 800 services be classified as competitive in each of its Missouri exchanges. Staff agrees that the Commission should approve a statewide competitive classification for Southwestern Bell's WATS service. No party presented any evidence with respect to these services that would support a different conclusion.

There are over 600 certified IXC's authorized to provide interexchange services in Missouri. As part of their interexchange services, IXC's typically provide WATS and 800 services to customers. CLECs can also offer WATS and 800 service. The services provided by IXC's and CLECs are functionally equivalent to and substitutable for Southwestern Bell's WATS and 800 service. The Commission finds that the large number of certified companies indicates that customer choices are available and reflects the relative ease of entry for firms wishing to enter the WATS and 800 markets.

In addition to IXC's and CLECs, WATS and 800 service faces competition from nontraditional competitors. Many companies are utilizing various e-commerce methods to communicate with their customers. For instance, consumers can purchase airplane tickets, rent cars, or check the balance on their credit card via the Internet, making calls to a company's 800 number unnecessary.

Given the extensive nature of competition for WATS and 800 service and the prior determinations of competitive status, the Commission finds that it should confirm competitive classification for Southwestern Bell's WATS and 800 service in all of its Missouri exchanges.

### **Conclusions of Law**

The Commission recognized the existence of substantial competition in the WATS and 800 service markets in Case No. TO-93-116. In that case, the Commission found that WATS and 800 service provided by IXC's was "substitutable" for Southwestern Bell's WATS and 800 services. Accordingly, the Commission granted Southwestern Bell's request for reclassification of its WATS and 800 service to a "transitionally competitive" classification.

Under Sections 392.370.1 and 2, a service classified as transitionally competitive automatically becomes classified as competitive three years after such designation unless the Commission affirmatively extends the transitionally competitive status for a specified period. Three years after WATS and 800 services were declared transitionally competitive (January 10, 1996), the Commission with Southwestern Bell's agreement extended the transitionally competitive status for an additional three years (until January 10, 1999). The Commission, however, did not further extend it. Thus, Southwestern Bell's WATS and 800 services became classified as competitive on January 10, 1999, by operation of law.

**Issue 12: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's special access services be classified as competitive pursuant to Section 392.245.5?**

-

### **Findings of Fact**

Special access services are dedicated, nonswitched services used to connect one or more end-user customer premises with an IXC's location, commonly referred to as a point of presence. Special access services are used to carry voice and data applications and, at higher speeds, video. Southwestern Bell offers eight categories of special access services: Metallic, Telegraph Grade, Voice Grade, Wideband Analog, Wideband Data, MegaLink Data (DS1), High Capacity (DS3), and DovLink service (data over a voice grade facility).

### **Conclusions of Law**

The Commission recognized the existence of competition in the intraLATA special access market in Case No. TO-93-116. In that case, the Commission found that services provided by interexchange carriers were “equivalent” and completely interchangeable with Southwestern Bell’s special access services. Accordingly, the Commission granted Southwestern Bell’s request for reclassification of special access services to a “transitionally competitive” classification.

Under Sections 392.370.1 and 2, a service classified as transitionally competitive automatically becomes classified as competitive three years after such designation unless the Commission affirmatively extends the transitionally competitive status for a specified period. Three years after special access services were declared transitionally competitive (January 10, 1996), the Commission with Southwestern Bell’s agreement extended the transitionally competitive status for an additional three years (until January 10, 1999). The Commission, however, did not further extend it. Thus, special access service became classified as competitive on January 10, 1999, by operation of law.

**Issue 13: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's switched access services be classified as competitive pursuant to Section 392.245.5?**

-

### **Findings of Fact**

Switched access service refers to the line of services sold to IXC's who wish to access the local public switched network in order to provide long distance service to end-users. It enables IXC's to originate or terminate their customers' long distance calls from an end-user's premise. Switched access has four categories of service, which are designated by feature groups. Feature groups are differentiated by their technical characteristics and how an end-user accesses

each of these services. The four categories of feature groups are: Feature Group A, which is a line side connection; Feature Group B, which is a trunk side connection accessed via the 950 access code; Feature Group C and Feature Group D, which are both trunk side connections allowing 1+ dialing of long distance calls. Switched access has three major components: the common line element, the end office element and the transport element.

Southwestern Bell is the dominant provider of exchange access services within its service territory. Southwestern Bell does not pay itself exchange access rates. Thus, switched access by its very nature is a locational monopoly. Southwestern Bell's witness Dr. Aron agreed that an IXC cannot bypass Southwestern Bell's terminating access. IXCs have no choice but to pay exchange access rates in order to complete their subscribers' calls. An IXC cannot select a lower cost alternative because there is no lower cost alternative.

The Commission has granted many CLECs competitive status for their switched access services. The Commission has, however, placed the restriction on CLEC switched access service that those rates may not be restructured if the aggregate of the rates is greater than the incumbent local exchange company's switched access rates. There was general agreement in the testimony that switched access is a locational monopoly no matter whether an incumbent or a competitive company provides the access. The Commission finds that Southwestern Bell's switched access services are no different than CLEC switched access services.

In its surrebuttal testimony and at the hearing, Southwestern Bell indicated that it is willing to provide this service subject to the same conditions applicable to CLEC provision of switched access service, specifically, Southwestern Bell's switched access service would remain subject to price caps, but Southwestern Bell would have greater flexibility to restructure its rates under that cap.

### **Conclusions of Law**

Pursuant to the Commission's decision in Case No. TO-99-596,<sup>27[23]</sup> CLECs' switched access rates are capped at the rate of the incumbent local exchange company in whose territory the CLEC competes. The CLEC, however, is not required to match the ILECs rate structure so long as the overall average is within the cap.

Southwestern Bell requests that its switched access services be classified as competitive in all of its exchanges in Missouri. Southwestern Bell indicates, however, that it is willing to provide this service subject to the same conditions applicable to CLEC provision of switched access service, specifically, Southwestern Bell's switched access service would remain subject to price caps, but Southwestern Bell would have greater flexibility to restructure its rates under that cap.

The Commission has determined that the switched access service of CLECs is competitive under Section 392.361. Under that section, the Commission determines that a service is competitive by finding that the "telecommunications . . . service . . . [is] subject to sufficient competition to justify a lesser degree of regulation." Section 392.245.8 sets out a different standard for the Commission with regard to a company under price cap regulation. Under that statutory provision, the Commission is required to determine whether or not effective competition exists for switched access service. Having found that Southwestern Bell's switched access service is a locational monopoly service, the Commission cannot find that switched access is subject to effective competition.

**Issue 14: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's Common Channel Signaling/Signaling System 7 services be classified as competitive pursuant to Section 392.245.5?**

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<sup>27[23]</sup> *In the Matter of the Access Rates to be Charged by Competitive Local Exchange Telecommunications Companies in the State of Missouri*, Case No. TO-99-596.

### **Findings of Fact**

Southwestern Bell's SS7 provides a dedicated two-way signaling path between a customer and Southwestern Bell's Signal Transfer Point and provides access to Southwestern Bell's SS7 network. Where available, SS7 signaling is used with switched access service to carry the signals associated with a call on a transmission path that is separate from the voice path. In addition, SS7 is utilized to access Southwestern Bell's line information database and switched access 800 number portability access service.

The evidence presented shows that competition for SS7 services is significant. Southwestern Bell faces direct competition from Illuminet, TSI Telecommunications Services, Inc., and IDN, LLC, in Missouri and on a nationwide basis. No party presented evidence to dispute this fact. Staff agrees with Southwestern Bell that SS7 services are subject to effective competition in all its Missouri exchanges.

### **Conclusions of Law**

The Commission concludes that given the extensive nature of competition, there is effective competition throughout all of Southwestern Bell's Missouri exchanges for SS7 services. The Commission concludes therefore that this service should be classified as competitive under Section 392.345.5 in all of Southwestern Bell's Missouri exchanges.

**Issue 15: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's Line Information Database services be classified as competitive pursuant to Section 392.245.5?**

### **Findings of Fact**

LIDB provides the customer with the ability to query billing validation data in Southwestern Bell's database in support of alternate billing services, such as Calling Card,

collect, and third number billing. Alternate billing services allow telecommunications companies to bill calls to an account that might not be associated with the originating line.

As with SS7 services, the evidence presented shows that competition for SS7 services is significant. Southwestern Bell faces direct competition from Illuminet, TSI Telecommunications Services, Inc., and IDN, LLC, in Missouri and on a nationwide basis. No party presented evidence to dispute this fact. Staff agrees with Southwestern Bell that LIDB services are subject to effective competition in all its Missouri exchanges.

### **Conclusions of Law**

The Commission concludes that given the extensive nature of competition, there is effective competition throughout all of Southwestern Bell's Missouri exchanges for LIDB services. The Commission concludes, therefore, that this service should be classified as competitive under Section 392.345.5 in all of Southwestern Bell's Missouri exchanges.

**Issue 16: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's directory assistance (DA) services be classified as competitive pursuant to Section 392.245.5?**

-

### **Findings of Fact**

Directory Assistance Services provide callers with assistance in obtaining telephone listing information. The directory assistance services currently offered by Southwestern Bell locally include local directory assistance, directory assistance call completion (including AutoConnect) and national directory assistance. Local directory assistance provides callers with listed telephone numbers of subscribers who are located in the same local calling area and in the calling customer's home numbering plan area. Directory assistance call completion provides the customer the option of having local or intraLATA long distance calls automatically completed by pressing "1" after the listed telephone number is received from directory assistance.

AutoConnect is another form of call completion service available to callers to directory assistance. AutoConnect differs, however, in that there is no charge to the caller for the service. Rather, call completion charge is billed to the called AutoConnect subscriber. If the directory assistance caller requests the telephone number of a caller subscribing to AutoConnect, the caller will be advised that the call can be completed at no additional call completion charge to the caller. Finally, national directory assistance is a service whereby customers may obtain telephone listing information for areas outside their local calling area.

Staff and Public Counsel presented persuasive testimony about the link between directory assistance and basic local service. Directory assistance has historically been accessed when customers dial “411.” When customers dial in this manner, the calls are routed to the local exchange carrier. Southwestern Bell presented evidence of several other types of directory assistance available on a statewide basis in Missouri.

The Commission finds that directory assistance is so closely related to basic local service that it cannot be subject to effective competition where basic local is not subject to effective competition. Therefore, the Commission determines that where it has found basic local service to be subject to effective competition, directory assistance services are also subject to effective competition and should be classified as competitive.

### **Conclusions of Law**

In weighing all the relevant factors, the Commission finds that directory assistance is so closely related to basic local service that it cannot be subject to effective competition where basic local is not subject to effective competition. The Commission has found above that for basic local business customers the Kansas City and St. Louis exchanges are subject to effective competition, and for basic local residential customers the Harvester and St. Charles exchanges



have been determined to be subject to effective competition. Therefore, the Commission determines that directory assistance services for those business and residential customer are also subject to effective competition and should be classified as competitive.

**Issue 17: In which Southwestern Bell Telephone Company exchanges, if any, should Southwestern Bell's operator services (OS) be classified as competitive pursuant to Section 392.245.5?**

**Findings of Fact**

Operator Services refer to a variety of call completion services that Southwestern Bell offers its customers in Missouri. These services facilitate the completion of a call, often using live operators or through an automated Interactive Voice System. Southwestern Bell's operator services in Missouri include calling cards, collect calls, calls billed to a third number, sent paid calls, person-to-person, line status verification, and busy line interrupt service. A customer may use operator services by dialing "0" or "0 + number" from any telephone, but generally customers utilize operator services when placing a call when away from their home or office.

Southwestern Bell's Station to Station, Person to Person and Calling Card Services were previously declared transitionally competitive in Case No. TO-93-116. The Commission extended the initial three-year period for the transitionally competitive classification from January 10, 1996, to January 10, 1999. The Commission finds that these services became classified as competitive at that time.

Southwestern Bell's other operator services are busy line verification and busy line verification interrupt. Staff and Public Counsel presented persuasive testimony that the same interrelationship between local service and directory assistance applies to busy line verification and busy line interrupt. Historically, customers have dialed "0" to use these operator services. When customers dial in this manner the calls are routed to the local exchange carrier. Thus, as

with directory assistance, busy line verification and busy line interrupt are too closely related to the provision of basic local service to be considered subject to effective competition where the underlying basic local service is not also subject to effective competition.

### **Conclusions of Law**

Southwestern Bell's station-to-station, person-to-person, and calling card operator services were found to be transitionally competitive in Case No. TO-93-116. Subsequent to that finding, and following a three-year extension of the transitionally competitive classification, these services have become classified as competitive as of January 10, 1999.

The Commission finds that Southwestern Bell's busy line verification and busy line verification interrupt services face effective competition and are hereby classified as competitive pursuant to Section 392.245.5 for business customers in only the Kansas City and St. Louis exchanges and for residential customers in only the St. Charles and Harvester exchanges. It also follows that because Southwestern Bell's business and residential services have not been shown to face effective competition in its other exchanges, that its busy line verification and busy line verification interrupt services do not face effective competition in its other exchanges either.

### **CONCLUSION**

The Commission has examined the status of competition within each of Southwestern Bell's exchanges. The Commission considered all the relevant factors set out in Section 386.020(13), and the purposes of Chapter 392, as set out in Section 392.185, and made the above findings and conclusions. Therefore, the Commission, in accordance with those findings and conclusions, will designate certain of Southwestern Bell's services in certain exchanges as competitive.

**IT IS THEREFORE ORDERED:**

- 1. That the core business switched services of Southwestern Bell Telephone Company in the Kansas City and St. Louis exchanges are classified as competitive.
- 2. That the business line-related services of Southwestern Bell Telephone Company in the Kansas City and St. Louis exchanges are classified as competitive.
- 3. That the directory assistance services for business customers of Southwestern Bell Telephone Company in the Kansas City and St. Louis exchanges are classified as competitive.
- 4. That the Busy Line Verification and Busy Line Interrupt services for business customers of Southwestern Bell Telephone Company in the Kansas City and St. Louis exchanges are classified as competitive.
- 5. That residential access line services of Southwestern Bell Telephone Company in the Harvester and St. Charles exchanges are classified as competitive.
- 6. That residential access line-related services of Southwestern Bell Telephone Company in the Harvester and St. Charles exchanges are classified as competitive.
- 7. That the Optional Metropolitan Calling Area service for residential customers of Southwestern Bell Telephone Company in the Harvester and St. Charles exchanges are classified as competitive.
- 8. That the directory assistance services for residential customers of Southwestern Bell Telephone Company in the Harvester and St. Charles exchanges are classified as competitive.

➤ 9. That the Busy Line Verification and Busy Line Interrupt for residential customers of Southwestern Bell Telephone Company in the Harvester and St. Charles exchanges are classified as competitive.

➤ 10. That Southwestern Bell Telephone Company's Common Channel Signaling/Signaling System 7 services are classified as competitive in all of its Missouri exchanges.

➤ 11. That Southwestern Bell Telephone Company's Line Information Database services are classified as competitive in all of its Missouri exchanges.

➤ 12. That any motion not previously ruled on is denied and any objection not previously ruled on is overruled.

➤ 13. That this Report and Order shall become effective on January 6, 2002.

**BY THE COMMISSION**

**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

Simmons, Ch., Murray, and Lumpe,  
CC., concur;  
Gaw, C., dissents;  
certify compliance with the provisions  
of Section 536.080, RSMo 2000.  
Forbis, C., not participating.

Dated at Jefferson City, Missouri,  
on this 27th day of December, 2001.

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Investigation of the State of       )  
Competition in the Exchanges of Sprint Missouri, Inc.)    **Case No. IO-2003-0281**

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**REPORT AND ORDER**

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**Issue Date: December 4, 2003**

**Effective Date: December 14, 2003**

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Investigation of the State of       )  
Competition in the Exchanges of Sprint Missouri, Inc.)     **Case No. IO-2003-0281**

**APPEARANCES**

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**REGULATORY LAW JUDGE:**   **Morris L. Woodruff**

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## **REPORT AND ORDER**

### **SUMMARY**

In this report and order, the Commission finds that many of the services that Sprint offers in its Kearney, Rolla, and Norborne exchanges are subject to effective competition and may be classified as competitive and no longer subject to price cap regulation. The Commission also finds that some of the non-local services that Sprint offers throughout its Missouri exchanges are subject to effective statewide competition and may be classified as competitive and no longer subject to price cap regulation.

### **FINDINGS OF FACT**

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The Commission in making this decision has considered the positions and arguments of all of the parties. Failure to



specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

### **Procedural History**

This case was opened on February 10, 2003, when the Staff of the Commission filed a Motion to Open Case. Staff's motion indicated that ExOp of Missouri, Inc., an alternative local exchange telecommunications company, was authorized to begin providing services in an exchange of Sprint Missouri, Inc., an incumbent local exchange telecommunications company, on December 15, 1998. Staff's motion indicated that the fifth-year anniversary of that authorization would trigger the statutory requirement that the Commission investigate the state of competition in the exchanges served by Sprint to determine whether effective competition exists in those exchanges. Staff asked the Commission to open a case to conduct the investigation mandated by statute.

On February 14, the Commission issued an order establishing this case and, at the request of Sprint, joining three competitive local exchange companies as parties. The parties joined at that time were: Fidelity Communications Services, Inc.; Green Hills Telecommunications Services; and ExOp of Missouri, Inc. The Commission also indicated that any other interested party wishing to intervene would need to file an application to intervene on or before March 6.

After timely applications to intervene were received, the Commission, on March 17, issued an order that allowed the following companies to intervene: Southwestern Bell Telephone, L.P. d/b/a SBC Missouri; AT&T Communications of the Southwest, Inc.; MCI metro Access Transmission Services, LLC, Brooks Fiber Communications of Missouri,

Inc., and MCI WorldCom Communications, Inc.; and the National ALEC Association/Prepaid Communications Association.<sup>28[1]</sup>

On March 26, the Commission adopted a procedural schedule leading to a hearing set for July 14 through 18, 2003. Sprint filed direct testimony on April 25. Staff, the Office of the Public Counsel, Fidelity, AT&T, and ExOp filed rebuttal testimony on June 10. Sprint, Staff, and Public Counsel filed surrebuttal testimony on July 7.

The hearing commenced on July 14. Counsel for Sprint, Staff, Public Counsel, Green Hills, Southwestern Bell, Fidelity, ExOp, and AT&T appeared at the hearing. Counsel for the MCI WorldCom group of companies was excused from appearing at the hearing and the companies thereby waived their rights to participate in the hearing. AT&T's motion to withdraw as a party was sustained at the beginning of the hearing and AT&T did not participate further in the hearing. Counsel for Green Hills and Southwestern Bell offered opening statements but then withdrew from further participation in the hearing. The hearing concluded on July 15. Sprint, Staff, Public Counsel, ExOp, and Fidelity submitted initial briefs on September 3 and reply briefs on September 24.

### **The State of Competition**

This case was opened for the purpose of investigating the state of competition in the areas served by Sprint. If the Commission finds that Sprint faces effective competition in a particular exchange or in the provisioning of a particular statewide service, then Sprint will be freed from the constraints imposed by price cap regulation for those exchanges or services. In other words, Sprint will be able to establish prices for those exchanges and services based on market conditions.

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<sup>28[1]</sup> AT&T and the National ALEC Association/Prepaid Communications Association subsequently withdrew from the case.

Sprint operates in 80, mostly rural, exchanges throughout Missouri but contends that it faces effective competition in only five specific exchanges. Sprint also contends that it faces effective competition for several non-local services that it offers statewide. The Commission will first address the question of competition in each of the five exchanges.

### **The State of Competition in Specific Exchanges**

#### **Kearney**

Kearney is a small suburban community at the northern edge of the Kansas City metropolitan area. Sprint's records indicate that in 2001, it served 3,394 residential access lines and 696 nonresidential access lines, for a total of 4,090 access lines in the Kearney exchange.<sup>29[2]</sup> In addition to Sprint, the incumbent local exchange carrier, Kearney is served by five competitive carriers that offer local exchange service.

Those five carriers are: 1) 877-RingAgain; 2) EZtalk; 3) Max-Tel; 4) State Telephone; and 5) ExOp of Missouri d/b/a Unite.<sup>30[3]</sup> The first four companies on that list offer only resold service. Resellers offer service to their customers by repackaging and repricing the services offered by the incumbent local exchange carrier. The Commission has previously found that "the mere presence of resellers is not substantial evidence for the Commission to determine that effective competition exists."<sup>31[4]</sup> Sprint indicates that it agrees with that finding and does not rely on the presence of the resellers as the basis for its request for competitive classification.<sup>32[5]</sup>

The fifth carrier offering competitive services in the Kearney exchange is ExOp. Unlike the others, ExOp offers 100 percent facilities-based service. ExOp also owns a cable television

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<sup>29[2]</sup> Exhibit 1, Idoux Direct, Schedule JRI-3

<sup>30[3]</sup> Exhibit 1, Idoux Direct, Page 28, Lines 19-23.

<sup>31[4]</sup> In the Matter of the Investigation of the State of Competition in the Exchanges of Southwestern Bell Telephone Company, Case No. TO-2001-467, Report and Order issued December 27, 2001, Page 23. The Report and Order was admitted into evidence in this case as Exhibit 20.

<sup>32[5]</sup> Exhibit 1, Idoux Direct, Page 13, lines 20-24.

franchise in Kearney<sup>33[6]</sup> and has been able to use its cable facilities to offer telephone service to its customers. ExOp indicates that its business plan is predicated on customers subscribing to a bundle of local telephone service with cable television service and DSL Internet service.<sup>34[7]</sup> In addition, ExOp has been able to offer its services at prices somewhat lower than those charged by Sprint.<sup>35[8]</sup> Using this business plan, ExOp has been able to gain a substantial share of the local exchange market in Kearney.

ExOp's precise share of the market in Kearney is not easily determined. However, measured by the number of access lines served by the two companies, ExOp has been able to gain a significant portion of the market since it began offering services in the exchange in February 1999. The exact number of lines currently served by the competing companies is a proprietary number and for that reason will not be set out in this report and order.<sup>36[9]</sup> However, line counts for December 2001 are not proprietary and indicate that at that time Sprint served 3,394 residential lines and 696 business lines in the Kearney exchange. At the same time, ExOp served 1,110 residential lines and 476 business lines in that exchange.<sup>37[10]</sup> Since that time the number of lines served by ExOp has increased while the number of lines served by Sprint has continued to decrease.

Although ExOp has secured a substantial share of the market, there are still areas within the exchange for which it has not constructed facilities and for which it does not anticipate constructing facilities in the near future.<sup>38[11]</sup> ExOp indicated that it was hesitant to construct new facilities because its parent corporation, Aquila, Inc., was experiencing financial difficulties and was not

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<sup>33[6]</sup> Transcript p. 360, lines 12-14.

<sup>34[7]</sup> Exhibit 11, Devoy Rebuttal, Page 6, lines 9-14.

<sup>35[8]</sup> Exhibit 6, McKinnie Rebuttal, Page 22, Lines 18-22. A chart showing a side-by-side comparison of the rates charged by Sprint and ExOp may be found at Exhibit 1, Idoux Direct, Pages 33-34.

<sup>36[9]</sup> The proprietary numbers for December 2002 are set out in Exhibit 6, McKinnie Rebuttal, Schedule ACM-5.

<sup>37[10]</sup> Exhibit 6, McKinnie Rebuttal, Schedule ACM-5.

<sup>38[11]</sup> Exhibit 11, Devoy Rebuttal, Page 3, Lines 22-24.

willing to invest additional capital in ExOp's expansion plans.<sup>39[12]</sup> However, ExOp announced at the hearing that an agreement had been reached for ExOp to be sold by Aquila to a former general manager of ExOp. There is no evidence in the record to indicate how this sale would affect ExOp's ability to compete in the Kearney exchange.

While ExOp currently does not have facilities available to serve every potential customer in the Kearney exchange, it has been designated by the Commission as a telecommunications carrier eligible to receive universal service support – an ETC – in that exchange.<sup>40[13]</sup> As an ETC, ExOp is required to offer its services to customers throughout the exchange.<sup>41[14]</sup> It need not have facilities in place to immediately serve all customers, but it is required to “extend its network to serve new customers upon reasonable request.”<sup>42[15]</sup> ExOp has not, however, received any universal service funding for the Kearney exchange.<sup>43[16]</sup>

### **Platte City**

Like Kearney, Platte City is a small suburban community at the northern edge of the Kansas City metropolitan area. In 2001, Sprint served 2,852 residential access lines and 1,384 nonresidential access lines, for a total of 4,236 access lines in the Platte City exchange. Platte City is served by the same five competitive carriers that offer service in Kearney. Again, ExOp is the only competitive carrier that is offering facilities-based service.

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<sup>39[12]</sup> Exhibit 11, Devoy Rebuttal, Page 3, Lines 24-25.

<sup>40[13]</sup> Order Granting Designation as an Eligible Carrier Pursuant to Section 254 of the Telecommunications Act of 1996, Case No. TA-2001-251, May 15, 2001.

<sup>41[14]</sup> 47 U.S.C. Section 214(e)(1).

<sup>42[15]</sup> Exhibit 13, Declaratory Ruling FCC Docket No. 96-45, August 10, 2000, Page 8.

<sup>43[16]</sup> Transcript, Page 354, Lines 9-12.

However, the situation in Platte City differs from that in Kearney in that ExOp does not have a franchise to offer cable television service in Platte City and, due to build out requirements imposed by the City of Platte City, ExOp does not anticipate obtaining a cable television franchise in that city.<sup>44[17]</sup> As a result, ExOp is not able to offer the bundles of services in Platte City that it is able to offer in Kearney. Furthermore, ExOp only began offering service in the Platte City exchange in August 2002.<sup>45[18]</sup>

Not surprisingly, given these differences, ExOp's share of the market in Platte City is much smaller than its share of the market in Kearney. At the end of 2002, ExOp served 55 residential lines and 148 business access lines in Platte City.<sup>46[19]</sup> That compares to 4,236 lines served by Sprint in that exchange in 2001. No evidence was presented to indicate how many lines ExOp was serving in 2003. However, during the first six months of 2003, Sprint lost 116 access lines in the Platte City exchange. That represents a six percent annualized decrease in access lines for that exchange.<sup>47[20]</sup> Sprint expects that rate of line loss to accelerate as ExOp serves more customers in the exchange.<sup>48[21]</sup>

ExOp is an ETC in the Platte City exchange, as it is in Kearney.<sup>49[22]</sup> ExOp does not currently have facilities in place to serve most of the Platte City exchange. But, in the areas that it does serve, ExOp offers rates that are comparable to the rates offered by Sprint.<sup>50[23]</sup> ExOp has

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<sup>44[17]</sup> Transcript, Page 360, Lines 15-25.

<sup>45[18]</sup> Exhibit 11, Devoy Rebuttal, Page 6, Lines 18-21.

<sup>46[19]</sup> Exhibit 11, Devoy Rebuttal, Page 7, Lines 1-6.

<sup>47[20]</sup> Exhibit 2, Idoux Surrebuttal, Page 17, Lines 1-7.

<sup>48[21]</sup> Exhibit 2, Idoux Surrebuttal, Page 17, Lines 1-7.

<sup>49[22]</sup> Order Granting Designation as an Eligible Carrier Pursuant to Section 254 of the Telecommunications Act of 1996, Case No. CO-2003-0252, April 10, 2003.

<sup>50[23]</sup> Exhibit 2, Idoux Surrebuttal, Page 18, Lines 12-16. Sprint and ExOp both offer the same rates in Platte City as they do in Kearney.

recently signed a contract to replace Sprint as the provider of telephone service to the City of Platte City.<sup>51[24]</sup>

## **Rolla**

Rolla has a population of approximately 14,000, and is located in East-Central Missouri. It is not associated with any metropolitan area. Sprint's records indicate that in 2001, it served 10,465 residential access lines and 8,111 nonresidential access lines, for a total of 18,576 access lines in the Rolla exchange.<sup>52[25]</sup> In addition to Sprint, which is the incumbent local exchange carrier, nine competitive carriers offer local exchange service in Rolla.

The nine competitive carriers that offer local exchange service in Rolla are as follows:

- 1) Buy-Tel Communications;
- 2) 877-RingAgain;
- 3) eztalk;
- 4) Fidelity Communications Services I;
- 5) Max-Tel Communications;
- 6) Metro Teleconnect Companies;
- 7) 1-800 RECONEX;
- 8) State Discount Telephone; and
- 9) Universal Telecom.<sup>53[26]</sup>

Of those nine companies, only Fidelity is operating as a facilities-based carrier.<sup>54[27]</sup> The other eight carriers operate only as pre-paid resellers.<sup>55[28]</sup>

Fidelity is a competitive local exchange carrier certified to provide basic local telecommunications services in Sprint's exchanges. Fidelity is a subsidiary of Fidelity Communications Co., which also owns Fidelity Telephone Company, an incumbent local exchange

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<sup>51[24]</sup> Exhibit 2, Idoux Surrebuttal, Page 18, Lines 9-10.

<sup>52[25]</sup> Exhibit 1, Idoux Direct, Schedule JRI-3

<sup>53[26]</sup> Exhibit 1, Idoux Direct, Page 40, Lines 4-19.

<sup>54[27]</sup> Exhibit 1, Idoux Direct, Page 42, Lines 8-9. See also Exhibit 12, Taylor Rebuttal, Page 3, Lines 54-58.

<sup>55[28]</sup> Exhibit 12, Taylor Rebuttal, Page 4, Lines 75-80.

carrier headquartered in Sullivan, Missouri.<sup>56[29]</sup> Importantly, Fidelity Communications Co. also owns Fidelity Cablevision, Inc., which provides cable television service in Rolla.<sup>57[30]</sup>

Fidelity has been able to use its affiliated cable television system to provide telecommunication services to customers in Rolla at rates that are comparable to those offered by Sprint.<sup>58[31]</sup> Fidelity started providing telecommunications services in Rolla in July 2000.<sup>59[32]</sup> However, Fidelity Cablevision has been providing cable television services in Rolla for approximately eight years. Fidelity's witness indicated that this gave Fidelity an advantage in entering the telecommunications market in that it had name recognition and a positive reputation for quality of service within the Rolla community, as well as an existing local business office and other synergies.<sup>60[33]</sup>

Fidelity has been able to use the advantages afforded by its affiliation with a cable television system to claim a substantial portion of the market in the Rolla exchange. The exact number of lines currently served by the competing companies is a proprietary number and for that reason will not be set out in this report and order.<sup>61[34]</sup> However, line counts for December 2001 are not proprietary and indicate that at that time Sprint served 10,465 residential lines and 8,111 business lines in the Rolla exchange. At the same time, Fidelity served 1,066 residential lines and 1,129 lines. Since December 2001, Fidelity's share of the market has increased substantially.<sup>62[35]</sup> At the time of the hearing, Fidelity served over 25 percent of the access lines in Rolla.<sup>63[36]</sup> As was the

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<sup>56[29]</sup> Exhibit 12, Taylor Rebuttal, Page 2, Lines 40-47.

<sup>57[30]</sup> Exhibit 12, Taylor Rebuttal, Page 3, Lines 50-52.

<sup>58[31]</sup> Exhibit 6, McKinnie Rebuttal, Page 25, Lines 6-10. A chart showing a side-by-side comparison of the rates charged by Sprint and Fidelity I may be found at Exhibit 1, Idoux Direct, Pages 43-44.

<sup>59[32]</sup> Exhibit 12, Taylor Rebuttal, Page 3, Lines 53-54.

<sup>60[33]</sup> Exhibit 12, Taylor Rebuttal, Page 8, Lines 176-182.

<sup>61[34]</sup> The proprietary numbers for December 2002 are set out in Exhibit 6, McKinnie Rebuttal, Schedule ACM-6.

<sup>62[35]</sup> Exhibit 6, McKinnie Rebuttal, Schedule ACM-6.

<sup>63[36]</sup> Exhibit 2, Idoux Surrebuttal, Page 32, Lines 6-8.



case with ExOp in the Kearney and Platte City exchanges, Fidelity has been designated as an ETC in the Rolla exchange.<sup>64[37]</sup>

### **St. Robert**

St. Robert is a small town located 25 miles west of Rolla. It is not associated with any metropolitan area. Sprint's records indicate that in 2001 it served 3,466 residential access lines and 2,461 nonresidential access lines, for a total of 5,927 access lines in the St. Robert exchange.<sup>65[38]</sup> In addition to Sprint, which is the incumbent local exchange carrier, St. Robert is served by the same nine competitive carriers that offer local exchange service in Rolla.<sup>66[39]</sup> Once again, Fidelity is the only competitive carrier offering facilities-based services in St. Robert.

Fidelity began offering service in St. Robert in February 2003, utilizing the switch it owns in Rolla.<sup>67[40]</sup> Since it has only started to compete in that exchange, Fidelity has not yet gained a significant share of the market in St. Robert. As of June 30, 2003, Fidelity was serving only 69 access lines in St. Robert. Forty-nine of those lines are being provided to the City of St. Robert, with the remainder divided between two other business customers.<sup>68[41]</sup> That is about one percent of the total market.<sup>69[42]</sup>

While Fidelity intends to continue to compete in St. Robert, it does not have all the advantages in that exchange that it has in Rolla. Most importantly, Fidelity does not operate a cable television system in St. Robert. As a result, Fidelity indicates that its business plan in St. Robert is to provide services only to selected business customers that it can easily reach with its existing facilities. Fidelity estimates that with its current facilities it could reach about three to five percent

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<sup>64[37]</sup> Order Granting Designation as an Eligible Carrier Pursuant to Section 254 of the Telecommunications Act of 1996, Case No. TA-2002-122, November 6, 2001.

<sup>65[38]</sup> Exhibit 1, Idoux Direct, Schedule JRI-3.

<sup>66[39]</sup> Exhibit 1, Idoux Direct, Page 46, Lines 7-8.

<sup>67[40]</sup> Exhibit 1, Idoux Direct, Page 46, Lines 12-19.

<sup>68[41]</sup> Transcript, Page 379, Lines 1-5.

<sup>69[42]</sup> Transcript, Page 372, Lines 15-17.

of the business market in St. Robert.<sup>70[43]</sup> Fidelity does not intend, in the foreseeable future, to completely overbuild Sprint's network in St. Robert as it has attempted to do in Rolla.<sup>71[44]</sup> No evidence was offered indicating that Fidelity is an ETC in the St. Robert exchange.

### **Norborne**

Norborne is a rural exchange located 60 miles northeast of Kansas City. It is not associated with any metropolitan area. There are only about 600 access lines in the exchange.<sup>72[45]</sup> In addition to Sprint, which is the incumbent local exchange carrier, nine competitive carriers offer local exchange service in Norborne.

The nine competitive carriers that offer local exchange service in Norborne are as follows:

- 1) Buy-Tel Communications;
- 2) 877-RingAgain;
- 3) eztalk;
- 4) Green Hills Telecommunication Services;
- 5) Max-Tel Communications;
- 6) Metro Teleconnect Companies;
- 7) 1-800 Reconnex;
- 8) State Discount Telephone; and
- 9) Universal Telecom.<sup>73[46]</sup>

Of those nine companies, only Green Hills is operating as a facilities-based carrier.<sup>74[47]</sup>

Green Hills began offering services in the Norborne exchange in November 1999.<sup>75[48]</sup> By offering rates substantially below those offered by Sprint for essentially identical products,<sup>76[49]</sup>

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<sup>70[43]</sup> Transcript, Page 372, Lines 2-15.

<sup>71[44]</sup> Transcript, Page 371-372, Lines 23-25, 1.

<sup>72[45]</sup> Exhibit 6, McKinnie Rebuttal, Schedule ACM-4.

<sup>73[46]</sup> Exhibit 1, Idoux Direct, Page 22, Lines 2-19.

<sup>74[47]</sup> Exhibit 6, McKinnie Rebuttal, Page 20, Lines 13-14.

<sup>75[48]</sup> Exhibit 1, Idoux Direct, Page 24, Lines 15-16.

<sup>76[49]</sup> Exhibit 1, Idoux Direct, Page 25, Lines 4-11.

Green Hills has quickly gained nearly two-thirds of the market in the Norborne exchange.<sup>77[50]</sup>

Green Hills has been granted ETC status in the Norborne exchange.<sup>78[51]</sup>

### **Other Issues Affecting the State of Competition in Local Exchanges**

Wireless telecommunication exists as a competitor to Sprint's landline service throughout all of its exchanges in Missouri. Sixteen wireless carriers have interconnection agreements with Sprint.<sup>79[52]</sup> Sprint indicates that it may have lost some access lines to wireless competition but indicates that it has no way of determining exactly how many lines it may have lost.<sup>80[53]</sup> No specific evidence was offered by any party regarding how much competition wireless carriers offer Sprint in any of its exchanges. Moreover, Sprint acknowledges that it does not rely on competition from wireless providers in its argument for competitive classification for specific exchanges. Under the circumstances, the Commission can make no findings of fact regarding the impact of wireless telecommunications on competition in Sprint's exchanges.

### **Competition for Specific Non-local Statewide Services**

Sprint has requested competitive classification for several services that it offers statewide. These requests are not limited to any specific exchanges and would, instead, apply in all exchanges served by Sprint. Each service for which Sprint seeks competitive classification will be addressed separately.

#### **Centrex Services**

Sprint's Centrex service is described as "a central office based system that allows business customers to use Sprint's central office technology instead of purchasing their own switching

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<sup>77[50]</sup> Exhibit 6, McKinnie Rebuttal, Schedule ACM-4.

<sup>78[51]</sup> Order Approving Stipulation and Agreement, Case No. CO-2003-0162, March 4, 2003.

<sup>79[52]</sup> Exhibit 1, Idoux Direct, Page 14, Lines 2-3.

<sup>80[53]</sup> Exhibit 1, Idoux Direct, Page 14, Lines 25-26.

equipment.”<sup>81[54]</sup> Other competitive local exchange companies can offer this service in competition with Sprint, but much of Sprint’s competition comes from companies that sell switching equipment, such as PBX (Primary Branch Exchange) and key system hardware, to individual customers.<sup>82[55]</sup> Such customer owned equipment manages calls between stations on the customer’s premises without utilizing the central office switch, and handles calls to and from the public switched network.<sup>83[56]</sup> The availability of such equipment allows a business customer to choose to pay Sprint to provide a Centrex service for its switching needs; or it can choose to satisfy its need for that function by purchasing the necessary equipment from any one of several companies willing to sell that equipment. Among the companies that sell such equipment are SBC, Verizon, Intertel, Siemens, Avaya, and Towner Communications.<sup>84[57]</sup>

The competition offered by customer premise equipment is apparently effective competition. Since June of 2001, Sprint has lost over 7,000 Centrex lines, 20 percent of its business.<sup>85[58]</sup> The Missouri legislature recognized the potential effectiveness of this form of competition in 1996 when it authorized customer-specific pricing for central office-based services that substitute for PBX services.<sup>86[59]</sup> Sprint currently uses customer specific pricing for its Centrex service offerings.<sup>87[60]</sup>

Because Sprint’s competition for its Centrex service is coming from equipment sellers rather than competing service providers, that competition is not limited to specific exchanges. For that reason, Sprint is seeking statewide competitive classification for its Centrex service.

### **IntraLATA Private Line Services**

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<sup>81[54]</sup> Exhibit 3, Harper Direct, Page 21, Lines 15-17.

<sup>82[55]</sup> Exhibit 6, McKinnie Rebuttal, Page 7, Lines 18-20.

<sup>83[56]</sup> Exhibit 3, Harper Direct, Page 22, Lines 20-22.

<sup>84[57]</sup> Exhibit 3, Harper Direct, Page 22, Lines 11-13.

<sup>85[58]</sup> Transcript, Page 223, Lines 4-8.

<sup>86[59]</sup> Section 392.200.8, RSMo 2000.

<sup>87[60]</sup> Transcript, Page 219, Lines 5-16.

Private line services allow a customer to transport data, voice, or video between specific points using a dedicated line.<sup>88[61]</sup> Sprint's competition for this service comes from facilities based competitive local exchange carriers, such as ExOp and Fidelity; but also from interexchange carriers and fiber network providers.<sup>89[62]</sup> The legislature has recognized the existence of competition for this service by allowing for customer-specific pricing for private line services.<sup>90[63]</sup>

Because Sprint's competition for intraLATA private line services is coming from competitors that are not limited to a specific exchange, Sprint is seeking statewide competitive classification for that service.

### **ATM and Frame Relay Services**

ATM (Asynchronous Transfer Mode) and Frame Relay services allow a customer to transport data, voice, or video between specific points using a dedicated line.<sup>91[64]</sup> Sprint's competition for this service comes from facilities based competitive local exchange carriers, such as ExOp and Fidelity; but also from interexchange carriers and fiber network providers.<sup>92[65]</sup> The legislature has recognized the existence of competition for this service by allowing for customer-specific pricing.<sup>93[66]</sup>

Because Sprint's competition for intraLATA private line services is coming from competitors that are not limited to a specific exchange, Sprint is seeking statewide competitive classification for that service.

### **IntraLATA MTS**

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<sup>88[61]</sup> Exhibit 3, Harper Direct, Page 24, Lines 1-6.

<sup>89[62]</sup> Exhibit 3, Harper Direct, Pages 24-25, Lines 15-23, 1-6; Exhibit 6, McKinnie Rebuttal, Page 8, Lines 1-15.

<sup>90[63]</sup> Section 392.200.8, RSMo 2000.

<sup>91[64]</sup> Exhibit 3, Harper Direct, Page 24, Lines 1-6.

<sup>92[65]</sup> Exhibit 3, Harper Direct, Pages 24-25, Lines 15-23, 1-6; Exhibit 6, McKinnie Rebuttal, Page 8, Lines 1-15.

<sup>93[66]</sup> Section 392.200.8, RSMo 2000.

IntraLATA MTS (message toll services) is essentially Sprint's intraLATA toll service.<sup>94[67]</sup>

In other words, it is the service used by a residential or business customer when that customer dials a number in another exchange located within the LATA. Sprint faces a great deal of competition for the provisioning of this service. There are at least 586 interexchange carriers certified in Missouri that can offer this service in competition with Sprint.<sup>95[68]</sup> In December 2002, 52 different carriers were actually providing intrastate toll services to Sprint's local customers.<sup>96[69]</sup> As a result of intraLATA presubscription, which Sprint instituted in August 1997, Sprint's local customers can utilize the interexchange carrier of their choice without dialing any extra numbers.<sup>97[70]</sup> Not surprisingly, given this level of competition, Sprint's intraLATA toll minutes and revenues have declined by three-fourths since 1999.<sup>98[71]</sup>

Because Sprint's competition for intraLATA MTS is coming from competitors that are not limited to a specific exchange, Sprint is seeking statewide competitive classification for that service.

### **IntraLATA WATS and 800 Services**

IntraLATA WATS (Wide Area Telecommunications Services) includes both 800 service and outward WATS (OUTWATS). 800 service allows incoming calls to be toll-free for the calling party. OUTWATS allows for outgoing calls to be billed on a usage sensitive basis.<sup>99[72]</sup> These services are essentially intraLATA toll services billed in a different way. As such they are subject to competition from the same competitors as intraLATA toll services. Because Sprint's competition for intraLATA WATS and 800 services is coming from competitors that are not limited to a specific exchange, Sprint is seeking statewide competitive classification for those services.

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<sup>94[67]</sup> Exhibit 3, Harper Direct, Page 6, Lines 17-18.

<sup>95[68]</sup> Exhibit 3, Harper Direct, Page 7, Lines 1-2.

<sup>96[69]</sup> Exhibit 3, Harper Direct, Page 9, Lines 11-12.

<sup>97[70]</sup> Exhibit 3, Harper Direct, Page 8, Lines 12-14.

<sup>98[71]</sup> Exhibit 3, Harper Direct, Page 9, Lines 10-11.

<sup>99[72]</sup> Exhibit 3, Harper Direct, Page 10, Lines 26-28.

### **Line Information Data Base (LIDB) Access**

This issue concerns SS7 (signaling system 7) service and Line Information Data Base services. These are technical services for which the customers are other telecommunications carriers.<sup>100[73]</sup> SS7 service provides a dedicated two-way signaling path between a customer and Sprint's Signal Transfer Point. SS7 signaling is used to carry the signals and associated information for switched access calls in a path that is separate from the voice call. SS7 is also utilized to access call processing databases such as LIDB (Line Information Data Base).<sup>101[74]</sup> As its name indicates, LIDB is a database. Access to that database allows a customer to query a database before completion of an alternate billed call, such as calling card, collect and third number billing calls, to determine that the call is authorized and billed to the proper party.<sup>102[75]</sup>

Sprint faces competition for these services from several carriers possessing their own nationwide SS7 network and LIDB databases.<sup>103[76]</sup> Specifically, Sprint faces nationwide competition from SNET, an SBC subsidiary; Illuminet (now called Verisign); and TSI Telecommunications Services, each of which can offer these services to any carrier.<sup>104[77]</sup> Because Sprint's competition for SS7 and LIDB services is coming from competitors that are not limited to a specific exchange, Sprint is seeking statewide competitive classification for those services.

### **Speed Dial Services**

Sprint's speed dial services allow a customer to create a speed-dialing list utilizing storage in the company's central office.<sup>105[78]</sup> The existence of such a list allows a customer to dial one of the preset numbers by pushing only two or three buttons.<sup>106[79]</sup> A customer can attain exactly the

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<sup>100[73]</sup> Exhibit 3, Harper Direct, Page 25, Line 20.

<sup>101[74]</sup> Exhibit 3, Harper Direct, Pages 25-26, Lines 20-23, 1-2.

<sup>102[75]</sup> Exhibit 3, Harper Direct, Page 26, Lines 3-6.

<sup>103[76]</sup> Exhibit 6, McKinnie Rebuttal, Page 8, Line 23.

<sup>104[77]</sup> Exhibit 3, Harper Direct, Page 26, Lines 9-12.

<sup>105[78]</sup> Exhibit 3, Harper Direct, Page 26, Lines 20-22.

<sup>106[79]</sup> Exhibit 6, McKinnie Direct, Page 9, Lines 9-12.

same result using the function built into many telephones. Telephone sets including this function are only slightly more expensive than sets that do not include this function.<sup>107[80]</sup> As a result, Sprint faces competition for speed dial service from every retail store in Missouri that sells telephone sets. Because Sprint's competition for speed dial services is coming from competitors that are not limited to a specific exchange, Sprint is seeking statewide competitive classification for those services.

### **Directory Assistance Services**

Sprint is seeking statewide competitive classification for three categories of directory assistance services: 1) directory assistance, which is assistance in finding a local number; 2) national directory assistance, which is assistance in finding a number outside the customer's local service area; and 3) directory assistance call completion, which is an optional service by which a customer can have their call to the requested number completed automatically by the operator.<sup>108[81]</sup> A basic local customer of Sprint can access directory assistance from Sprint by dialing 1-411. Dialing that number will allow the Sprint customer to obtain telephone numbers anywhere in the United States.<sup>109[82]</sup>

A Sprint customer does have alternatives to obtaining directory assistance services from Sprint. By dialing 1-area code-555-1212, or 00, the customer can access directory assistance service from his or her pre-subscribed long distance toll provider.<sup>110[83]</sup> However, if the Sprint customer simply dials 555-1212, without including the area code, they will reach the Sprint operator.<sup>111[84]</sup> A Sprint customer may also access directory assistance services by using his or her wireless phone or by looking up the number by using an Internet search engine.<sup>112[85]</sup>

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<sup>107[80]</sup> Exhibit 6, McKinnie Rebuttal, Page 9, Lines 13-21.

<sup>108[81]</sup> Exhibit 3, Harper Direct, Pages 12-13, Lines 11, 1-15.

<sup>109[82]</sup> Exhibit 6, McKinnie Rebuttal, Page 13, Lines 10-22.

<sup>110[83]</sup> Exhibit 3, Harper Direct, Page 15, Lines 14-21.

<sup>111[84]</sup> Exhibit 6, McKinnie Rebuttal, Page 14, Lines 20-22.

<sup>112[85]</sup> Exhibit 3, Harper Direct, Page 16, Lines 1-16.



Sprint indicates that since 1998 the volume of directory assistance calls handled by Sprint has declined by 36 percent, and ascribes this decline to competition from alternative sources for assistance.<sup>113[86]</sup> However, Sprint has not lowered its directory assistance rates to meet that competition.<sup>114[87]</sup> In fact, Sprint's rate for directory assistance for a non-coin call has increased by 14.6 percent since 1999.<sup>115[88]</sup>

### **Local Operator Services**

Operator services refer to those services, using live operators or automated systems, that provide customers with various call completion options.<sup>116[89]</sup> Sprint is seeking statewide competitive classification for three specific local operator services. Those three services are: 1) station-to-station calls with automatic recording equipment; 2) station-to-station calls with operator assistance; and 3) person-to-person calls.<sup>117[90]</sup> These services would include calls using a calling card, collect calls, calls billed to a third number, sent-paid calls, and person-to-person calls using an operator.<sup>118[91]</sup> A customer can utilize these services by dialing 0 or 0+ from any telephone.<sup>119[92]</sup>

Sprint is not the only source for operator services in the exchanges in which it operates. Those services are offered statewide by interexchange service providers, wireless carriers, pay telephone providers, and prepaid calling card providers.<sup>120[93]</sup> In addition, competitive local exchange carriers offer such services in the exchanges in which they operate.

While customers do have the ability to access operator services from other sources, when a Sprint customer dials 0 or 411, the most familiar way to reach an operator, the customer will be connected to a Sprint operator unless the customer has chosen a different intraLATA toll

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<sup>113[86]</sup> Exhibit 3, Harper Direct, Page 17, Lines 1-15.

<sup>114[87]</sup> Transcript, Page 200, Lines 7-12.

<sup>115[88]</sup> Transcript, Page 227-228, Lines 24-25, 1-2. *See also*, Exhibit 16, Page 3 of 52, Line 40.II.C.1.

<sup>116[89]</sup> Exhibit 3, Harper Direct, Page 18, Lines 1-2.

<sup>117[90]</sup> Exhibit 3, Harper Direct, Page 18, Lines 10-13.

<sup>118[91]</sup> Exhibit 3, Harper Direct, Page 18, Lines 15-17.

<sup>119[92]</sup> Exhibit 3, Harper Direct, Page 18-19, Lines 17, 1.

carrier.<sup>121[94]</sup> Furthermore, the statewide competition that Sprint faces for operator services, has not held down Sprint's rates for those services. Instead, Sprint's rate for a station-to-station operator assisted call has increased by 13.6 percent since 1999.<sup>122[95]</sup> For a person-to-person call the rate has increased by 15.7 percent.<sup>123[96]</sup>

### **Competition for Other Services:**

#### **Payphone Services**

A provider of payphone service must have three things in order to provide payphone service: 1) an access line; 2) coin control; and 3) answer supervision.<sup>124[97]</sup> The first requirement, an access line, can be obtained either from the incumbent local exchange carrier, such as Sprint, or from a competing facilities-based competitive local exchange carrier in those exchanges where a facilities-based competitive local exchange carrier is operating.<sup>125[98]</sup> The payphone service provider also has a choice on how to obtain the other two requirements, coin control and answer supervision. Those functions can be purchased from the incumbent local exchange carrier or from a competitive local exchange carrier. Alternatively, they may be obtained by purchasing what is referred to as a "smart phone." A "smart phone" includes coin control and answer supervision as a function built into the phone.<sup>126[99]</sup> Therefore, in an exchange where competition exists, Sprint faces competition from both the competing competitive local exchange carriers, and from customer premises equipment sold by many vendors.

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<sup>120[93]</sup> Exhibit 3, Harper Direct, Page 20, Lines 6-8.

<sup>121[94]</sup> Exhibit 6, McKinnie Rebuttal, Page 10, Lines 11-13.

<sup>122[95]</sup> Exhibit 16, Page 3 of 52, Line 40.V.B.2.

<sup>123[96]</sup> Exhibit 16, Page 3 of 52, Line 40.V.B.3.

<sup>124[97]</sup> Exhibit 2, Idoux Surrebuttal, Page 14, Lines 9-10.

<sup>125[98]</sup> Exhibit 2, Idoux Surrebuttal, Page 14, Lines 10-11.

<sup>126[99]</sup> Exhibit 2, Idoux Surrebuttal, Page 14, Lines 14-16.

## **ISDN Services**

ISDN stands for Integrated Services Digital Network and is a means for simultaneously transmitting integrated voice and data over a single exchange access line.<sup>127[100]</sup> Sprint initially sought competitive classification for this service in the Norborne, Kearney, Platte City, Rolla, and St. Robert exchanges, the exchanges for which it is seeking competitive classification. Green Hills does not offer ISDN service in the Norborne exchange. Fidelity and ExOp offer that service in the exchanges they serve at rates that are lower than those offered by Sprint.<sup>128[101]</sup> In response to the testimony filed by Staff, Sprint agreed that ISDN is not competitive in the Norborne exchange and withdrew its request for competitive classification in that exchange.<sup>129[102]</sup>

## **Optional MCA Services**

MCA is an optional interexchange plan that allows a basic local customer to have expanded calling scopes in the three major metropolitan areas in Missouri: St. Louis, Kansas City, and Springfield. Of the five exchanges for which Sprint is seeking competitive classification, MCA is available only in the Kearney and Platte City exchanges.<sup>130[103]</sup> Therefore, Sprint is seeking competitive classification for these services only in those two exchanges.

A customer cannot receive MCA services unless the customer also subscribes to basic local service from either Sprint or a competitive local exchange carrier. ExOp also offers Optional MCA services in the Kearney and Platte City exchanges and does so at a rate that is lower than the rate offered by Sprint.<sup>131[104]</sup>

## **CONCLUSIONS OF LAW**

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<sup>127[100]</sup> Exhibit 1, Idoux Direct, Exhibit JRI-7.

<sup>128[101]</sup> Exhibit 1, Idoux Direct, Pages 33-34, Line 17 and Pages 43-44, Line 11.

<sup>129[102]</sup> Exhibit 2, Idoux Surrebuttal, Page 15, Lines 13-15.

<sup>130[103]</sup> Exhibit 1, Idoux Direct, Exhibit JRI-7.

<sup>131[104]</sup> Exhibit 1, Idoux Direct, Pages 33-34, Line 17.

The Missouri Public Service Commission has reached the following conclusions of law.

Sprint is a public utility, and a telecommunications company, as those terms are defined in Section 386.020(42) and (51), RSMo 2000.<sup>132[105]</sup> As such, Sprint is subject to the Commission's jurisdiction pursuant to Chapters 386 and 392.

Section 392.245.1 provides that "[t]he commission shall have the authority to ensure that rates, charges, tolls and rentals for telecommunications services are just, reasonable and lawful by employing price cap regulation." Sprint is a large incumbent local exchange telecommunications company and is subject to Price Cap Regulation under Section 392.245. Under Price Cap Regulation, the maximum rates that Sprint may charge its customers are capped and can be changed only through compliance with the limitations and procedures found in Section 392.245.4.

If the Commission determines that effective competition exists in an exchange or for a particular service offered in an exchange, then the rates charged by the incumbent local exchange telecommunications company may no longer be subject to the price cap. The company may thereafter "adjust its rates for such competitive services upward or downward as it determines appropriate in its competitive environment."<sup>133[106]</sup>

The Missouri legislature has established standards for when services are to be considered competitive. Section 392.245.5 provides as follows:

Each telecommunications service of an incumbent local exchange telecommunications company shall be classified as competitive in any exchange in which at least one alternative local exchange telecommunications company has been certified under section 392.455 and has provided basic local telecommunications service in that exchange for at least five years, unless the commission determines, after notice and a hearing, that effective competition does not exist in the exchange for such service.

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<sup>132[105]</sup> All references to Missouri statutes will be to RSMo 2000, unless otherwise indicated.

<sup>133[106]</sup> Section 392.245.5.

The legislature has also obligated the Commission to periodically investigate the state of competition in the exchanges served by incumbent local exchange companies. Section 392.245.5 provides as follows:

The commission shall, from time to time, on its own motion or motion by an incumbent local exchange telecommunications company, investigate the state of competition in each exchange where an alternative local exchange telecommunications company has been certified to provide local exchange telecommunications service and shall determine, no later than five years following the first certification of an alternative local exchange telecommunication company in such exchange, whether effective competition exists in the exchange for the various services of the incumbent local exchange telecommunications company.

It is under this provision that the Commission has undertaken a review of the status of competition in the exchanges served by Sprint.

If the Commission determines that effective competition does exist in certain exchanges or for certain services, Sprint will then be able to adjust its rates upward or downward in response to the competitive market. If the Commission determines that an exchange or a particular service is not subject to effective competition, then Sprint's rates for those exchanges or services will remain subject to price cap regulation.<sup>134[107]</sup>

The Commission's determination regarding the existence of competition is not permanent and immutable. The legislature has also required the Commission to review, at least once every five years, the state of competition in those exchanges and for those services that it has found to be competitive, to determine whether effective competition continues to exist. If there is no longer effective competition, the exchange or service will once again be subject to price cap regulation.<sup>135[108]</sup>

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<sup>134[107]</sup> Section 392.245.5.

<sup>135[108]</sup> Section 392.245.5.

The legislature has provided some guidance for the Commission in determining whether effective competition exists. Section 386.020(13) requires the Commission to determine whether effective competition exists based on the following considerations:

- (a) The extent to which services are available from alternative providers in the relevant market;
- (b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions;
- (c) The extent to which the Commission has determined that effective competition exists;
- (d) Existing economic or regulatory barriers to entry; and
- (e) Any other factors deemed relevant by the Commission.

In making its determination if whether effective competition exists, the Commission is also guided by Section 392.185, which indicates that the provisions of chapter 392 are to be construed to:

- (1) Promote universally available and widely affordable telecommunications services;
- (2) Maintain and advance the efficiency and availability of telecommunications services;
- (3) Promote diversity in the supply of telecommunications services and products throughout the state of Missouri;
- (4) Ensure that customers pay only reasonable charges for telecommunications service;
- (5) Permit flexible regulation of telecommunications services;
- (6) Allow full and fair competition in telecommunications services;
- (7) Promote parity of urban and rural telecommunications services;
- (8) Promote economic, educational, health care and cultural enhancements; and
- (9) Protect consumer privacy.

As a carrier subject to price cap regulation, Sprint's rates are not established on an exchange-by-exchange basis. It cannot reduce the rates in one exchange to meet competition in that exchange without reducing rates in other exchanges where it may not be facing competition, unless it applies to the Commission for a waiver.<sup>136[109]</sup> The Commission cannot allow such pricing unless

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<sup>136[109]</sup> Section 392.200.

it finds by clear and convincing evidence that such pricing is reasonably necessary to promote the public interest and the purposes and policies of Chapter 392.<sup>137[110]</sup>

As the party asserting that there is effective competition in its exchanges, Sprint bears the burden of proof. That allocation of the burden of proof is consistent with the Commission's decision on that issue in a recent case regarding competition in the exchanges of Southwestern Bell Telephone Company.<sup>138[111]</sup> Sprint accepts that burden of proof and it is not an issue in this case.<sup>139[112]</sup>

### DECISION

After applying the facts as it has found them to its conclusions of law, the Commission has reached the following decisions regarding the issues identified by the parties.

**Issue 1: Section 392.245.5, RSMo, allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its residence core access line services (i.e., local exchange service, local operating service, directory listing, extension service, extended area service, local measured service and PBX service) offered in the Kearney, Norborne, Rolla, Platte City and St. Robert exchanges be classified as competitive. In which of these Sprint Missouri, Inc. exchanges, if any, should Sprint's residence core access line services be classified as competitive?**

Sprint asserts that effective competition exists in only 5 of its 80 exchanges in Missouri. The Commission will consider the state of competition in each of those five exchanges in turn. But first, the Commission will address several general arguments that apply to each of the exchanges in question.

First, in each of these five exchanges, Sprint is facing only one facilities-based competitor: ExOp in Kearney and Platte City; Fidelity in Rolla and St. Robert; and Green Hills in Norborne. That means that the basic local service market in those exchanges is still highly

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<sup>137[110]</sup> Section 392.200.4(1).

<sup>138[111]</sup> Exhibit 20, Page 9. In the Matter of the Investigation of the State of Competition in the Exchanges of Southwestern Bell Telephone Company, Report and Order, Case No. TO-2001-467, December 27, 2001.

concentrated. In discussing that concentration, Public Counsel's witness, Barbara Meisenheimer, referred to the Herfindahl-Hirschman Index (HHI), which is used by the Department of Justice in evaluating how concentrated a market is when it is evaluating a proposed merger.<sup>140[113]</sup> Ms. Meisenheimer argued that with only a single competitor, each of the exchanges in question would have an unacceptable level of market concentration, resulting in a potential exercise of market power between the two firms.<sup>141[114]</sup> From this, Public Counsel argues that the Commission cannot find effective competition in an exchange that has only two facilities-based competitors.

Clearly, with only two effective competitors, the market in these five exchanges is highly concentrated. Perhaps, if the Department of Justice were relying on the Herfindahl-Hirschman Index, it would not approve a merger between competitors in those markets. However, this case is not before the Department of Justice and this Commission has not been asked to approve a merger. The Herfindahl-Hirschman Index is perhaps a good tool for measuring market concentration; but it does not control the Commission's decision in this case.

Instead, this Commission must rely on the guidance offered by the Missouri legislature when it enacted the controlling statutes. Those statutes do not preclude a finding of effective competition where there is only one competitor challenging the incumbent local exchange carrier. Indeed, Section 392.245.5 creates a presumption that effective competition exists in an exchange when at least one alternative local exchange telecommunications company has been providing service in that exchange for at least five years. The fact that the basic local service market in these five exchanges is highly concentrated is a factor for the Commission to consider.

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<sup>139[112]</sup> Transcript, Page 37, Lines 17-22.

<sup>140[113]</sup> Exhibit 8, Meisenheimer Rebuttal, Page 17, Lines 10-15.

<sup>141[114]</sup> Exhibit 8, Meisenheimer Rebuttal, Page 19, Lines 1-12.



That single factor is not, however, conclusive.

A second general argument raised by Public Counsel and Fidelity concerns an alleged lack of price discipline imposed on Sprint's rates by the existence of competition in these five exchanges. Public Counsel points out that Sprint's statewide basic local rates have continued to rise within the confines of price cap regulation. From this Public Counsel argues that since prices have continued to rise, Sprint has not had to respond to competitive pressures by decreasing its prices, and therefore, effective competition must not exist.

This argument is not persuasive for two reasons. First, although falling rates are often touted as an argument for establishing a competitive market, there is no economic, or logical reason why prices must always fall in a competitive market. Sometime prices do rise in markets that are clearly competitive. Any motorist that observes the price fluctuations in the competitive retail gasoline market is aware that competition does not always result in falling prices. In fact, it is possible that the competitive market rates for telephone service are higher than the rates imposed on that market under rate of return regulation and carried through under price cap regulation. If that is the case, then rates will rise in a competitive market. This means that the fact that rates may not have fallen is not conclusive proof that effective competition does not exist.

Second, when the legislature established, in Section 386.020(13), the factors that the Commission should consider when determining whether effective competition exists in a specific exchange or for a specific service, it did not include a requirement that the competition must have been effective in imposing price discipline on the market. Indeed, as a company subject to price cap regulation, Sprint's ability to change its prices in specific exchanges in response to

localized competition is restricted by statute.<sup>142[115]</sup> Therefore, the Commission cannot expect competition to have imposed price discipline in specific exchanges until after Sprint, as the incumbent provider, has been freed to make a competitive pricing response in those exchanges.

The third general argument, this time raised by Sprint, as well as by those parties opposing competitive classification, concerns the existence of wireless communications as a form of competition in Sprint's exchanges. The parties offered arguments, but very little evidence, about the weight that the Commission should give to the presence of wireless competitors as a factor in whether effective competition exists in any particular exchange.

Clearly, there are wireless service providers operating in all of the exchanges served by Sprint. But Sprint did not offer any evidence that would establish exactly how effective that wireless competition was in any specific exchange. However, there is no need for the Commission to reach a conclusion about the effectiveness of that competition. Sprint made it clear that it was not relying on the existence of wireless competitors as the basis for its claim that effective competition exists in 5 of its 80 exchanges. Whatever wireless competition may exist, its effects are not restricted to only five exchanges. Rather, wireless competition is a sort of background effect in all of Sprint's exchanges. In deciding whether effective competition exists in the five exchanges named by Sprint, the Commission must examine the factors that make, or do not make, those five exchanges different from Sprint's other exchanges. The Commission will do so for each of the five exchanges in turn.

**Kearney:** The factor that leads Sprint to argue that effective competition exists in the Kearney exchange, as well as in the other four exchanges in question, is the presence of a competitor offering facilities-based competition. In other words, a competitor is offering services through the use of its own facilities, thus avoiding the bottleneck represented by

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<sup>142[115]</sup> Section 392.200.4.

Sprint's ownership of the loop bringing service into the customers home or business. ExOp is a facilities-based competitor for Sprint in the Kearney exchange.

The controlling statute requires the Commission to consider five factors in determining whether effective competition exists. The first factor is the extent to which services are available from alternative providers in the relevant market. Sprint's facilities based competitor, ExOp, operates a cable television system in Kearney. By bundling local phone service with cable TV service and high-speed Internet access, ExOp has been able to take about one-third of the local telephone market. ExOp has been providing services in Kearney for nearly five years and its market share has continued to increase. ExOp does not have facilities in place to serve every customer in the Kearney exchange, but it has been designated by the Commission as an ETC – an eligible telecommunications carrier – and is eligible to receive universal service support in that exchange. ExOp currently serves a substantial portion of the available market in the Kearney exchange and there is no reason to believe that it will not be able to maintain and perhaps increase that market share in the future. The Commission concludes that services are available from an alternative provider in the Kearney exchange and that the first factor favors a finding of effective competition.

The second factor is the extent to which services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions. ExOp offers essentially the same services to its customers that are offered by Sprint and it does so at prices that are generally lower than those charged by Sprint. The Commission concludes that the second factor favors a finding of effective competition.

The third factor is the extent to which the purpose and policies of Chapter 392, RSMo, including the reasonableness of rates, as set out in Section 392.185, RSMo, are being advanced.

As previously indicated, the rates charged by ExOp in the Kearney exchange are lower than the rates charged by Sprint. Sprint is not currently able to lower its rates on an exchange-by-exchange basis to meet that competition. But it will be able to do so once the exchange is declared to be competitive. At that point, Sprint, as well as ExOp, will be pressured to lower rates by the forces of competition, thus benefiting consumers and ensuring that rates remain reasonable. The Commission concludes that the third factor favors a finding of effective competition.

The fourth factor is whether there are any existing economic or regulatory barriers to entry. The parties have identified no regulatory barriers to the entry of competing companies into the Kearney exchange. Kearney is not located in a dense urban area and for that reason it may be economically more difficult for competitors to enter the market. However, the fact that ExOp is offering services in the exchange and has gained a substantial share of the market indicates that whatever economic barriers to competition may exist are not insurmountable. In successfully entering the market, ExOp was substantially aided by the fact that it operates a cable television system in the exchange and can use those existing facilities to help establish its market position. The Commission concludes that the fourth factor favors a finding of effective competition.

The fifth factor is whether there are any other factors deemed relevant by the Commission and necessary to implement the purposes and policies of Chapter 392, RSMo. The Commission is not aware of any relevant factors that it has not already considered.

After considering each of the factors set out in the controlling statute, the Commission concludes that effective competition exists in the Kearney exchange.

**Platte City:** As with Kearney, Platte City is served by a facilities-based competitor, ExOp. However, a consideration of the five factors leads to a different conclusion with regard to the state of competition in this exchange. Unlike the Kearney exchange, ExOp has only recently begun offering service in the Platte City exchange and has not yet gained a substantial share of the market. Importantly, ExOp does not operate a cable television system in Platte City and cannot use that system to enable it to overcome any economic barriers to the provisioning of facilities-based service to a non-urban area. For the customers that it does serve in Platte City, ExOp is able to offer lower rates than Sprint. However, it currently does not have facilities in place to serve more than a few customers in the Platte City exchange. Although ExOp is an ETC in Platte City, and may someday be able to serve a larger proportion of the customers in that exchange, its status as an ETC does not immediately make it an effective competitor for Sprint. The Commission must decide whether there is effective competition now, not whether there will be competition someday. The Commission concludes that effective competition does not exist in the Platte City exchange.

**Rolla:** Fidelity is a facilities-based competitor for Sprint in the Rolla exchange. Like ExOp in Kearney, Fidelity operates a cable television system in Rolla and has used its ability to offer bundled services to obtain about one fourth of the market. Fidelity has been offering telephone service in Rolla for approximately three years and has been offering cable television service for about eight years. As an affiliate of an established incumbent local exchange carrier in a nearby service area, Fidelity is a firmly established competitor. Fidelity is an ETC in Rolla and it should be able to maintain, if not increase, its market share in the future. The Commission concludes that services are available from an alternative provider in the Rolla market.

Fidelity offers essentially the same services to its customers that are offered by Sprint at prices that are competitive with those charged by Sprint. The Commission concludes that the services offered by the alternative provider are functionally equivalent and are offered at comparable rates, terms, and conditions.

As the Commission found in the Kearney exchange, once the Rolla exchange is declared to be competitive, Sprint and Fidelity will be under pressure to reduce rates to meet the challenges of competition, thus benefiting consumers and ensuring that rates remain reasonable. Therefore, the Commission concludes that the purposes and policies of Chapter 392 will be advanced.

The parties have not identified any regulatory barriers to the entry of competitors into the Rolla exchange. The fact that Fidelity, aided by its operation of a cable television system, has been able to gain a substantial share of the market indicates that any existing economic barriers to competition are not insurmountable.

The Commission is not aware of any other relevant factors that it has not already considered and concludes that effective competition exists in the Rolla exchange.

**St. Robert:** Fidelity also competes with Sprint in the St. Robert exchange using its own facilities. However, Fidelity only began offering service in that exchange in February 2003. As a result, it does not yet have a significant market share, although it is winning some business customers away from Sprint. Fidelity is not an ETC in St. Robert and instead its market plan in St. Robert is simply to cherry-pick a few profitable business customers that it can easily serve with its existing facilities. Fidelity does not have a cable TV franchise in St. Robert and as a result does not have facilities available to serve a significant proportion of the potential customers in that exchange. Fidelity does offer competitively priced service to those customers

that it chooses to serve in the St. Robert exchange, but those services simply are not available to most potential customers. The Commission concludes that effective competition does not exist in the St. Robert exchange.

**Norborne:** Green Hills is a facilities-based competitor for Sprint in the Norborne exchange. Green Hills began offering services in the Norborne exchange approximately four years ago. By offering the same services offered by Sprint at substantially lower rates, Green Hills has taken approximately two-thirds of the market in that small, rural exchange. Green Hills has been granted ETC status in the Norborne exchange and has not opposed Sprint's request for competitive status in that exchange. The Commission concludes that effective competition exists in the Norborne exchange.

**Issue 2:** Section 392.245.5, RSMo, allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its residence access line-related services (i.e. Sprint Solutions, busy line verification service, customer calling services, express touch, network service packages) offered in the Kearney, Norborne, Rolla, Platte City and St. Robert exchanges be classified as competitive. In which of these Sprint Missouri, Inc. exchanges, if any, should Sprint's residence access line-related services be classified as competitive?

The positions and arguments of the parties for this issue are the same as for issue 1. The Commission will reach the same result as for issue 1. The Commission concludes that effective competition exists in the Kearney, Rolla, and Norborne exchanges. The Commission concludes that effective competition does not exist in the Platte City and St. Robert exchanges.

**Issue 3:** Section 392.245.5, RSMo, allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its business core access line services (i.e. local exchange service, local operating service, directory listing, extension service, extended area service, local measured service and PBX service) offered in the Kearney, Norborne, Rolla, Platte City and St. Robert exchanges be classified as competitive. In which of these Sprint Missouri, Inc. exchanges, if any, should Sprint's business core access line services be classified as competitive?

The positions and arguments of the parties for this issue are the same as for issue 1. The Commission will reach the same result as for issue 1. The Commission concludes that effective competition exists in the Kearney, Rolla, and Norborne exchanges. The Commission concludes that effective competition does not exist in the Platte City and St. Robert exchanges.

**Issue 4: Section 392.245.5, RSMo, allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its business access line-related services (i.e. Sprint Solutions, busy line verification service, customer calling services, express touch, network service packages) offered in the Kearney, Norborne, Rolla, Platte City and St. Robert exchanges be classified as competitive. In which of these Sprint Missouri, Inc. exchanges, if any, should Sprint's business access line-related services be classified as competitive?**

The positions and arguments of the parties for this issue are the same as for issue 1. The Commission will reach the same result as for issue 1. The Commission concludes that effective competition exists in the Kearney, Rolla, and Norborne exchanges. The Commission concludes that effective competition does not exist in the Platte City and St. Robert exchanges.

**Issue 5: Section 392.245.5, RSMo, allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its high capacity exchange access line services be classified as competitive. In which Sprint Missouri, Inc. exchanges, if any, should Sprint's high capacity exchange access line services be classified as competitive?**

Sprint withdrew its request to have these services classified as competitive.<sup>143[116]</sup> As a result, the Commission does not need to decide this issue.

**Issue 6: Section 392.245.5, RSMo, allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its CENTREX services be classified as competitive. In which Sprint Missouri, Inc. exchanges, if any, should Sprint's CENTREX services be classified as competitive?**

Sprint's CENTREX services allow a business customer to use Sprint's central office technology to provide switching services to meet the customer's needs. Similar services are

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<sup>143[116]</sup> Exhibit 2, Idoux Surrebuttal, Page 2, Lines 20-21.



offered by competing local exchange companies but a customer can also meet its switching needs by buying the necessary hardware and installing the switching equipment on its own premises. The customer can obtain the necessary switching hardware from several unregulated suppliers. Sprint contends, and Staff agrees, that the ready availability of the necessary hardware provides effective competition for Sprint's CENTREX services. Since the suppliers of switching hardware can install their equipment for a customer in any of Sprint's exchanges, Sprint asks that the Commission find that there is effective competition for CENTREX services in all of its exchanges in Missouri.

Fidelity and Public Counsel oppose competitive classification for CENTREX services. They contend that customer premise equipment systems are not functionally equivalent to CENTREX because they still require purchase of dial tone from the local phone service provider. They also claim that Sprint failed to present evidence showing the existence of customer premise equipment systems competitors on an exchange-by-exchange basis.

The five considerations that the legislature directed the Commission to consider when deciding whether there is effective competition in an exchange also apply when the Commission is deciding whether a particular service is effectively competitive. The evidence establishes that switching services are available to customers through either purchase of service from Sprint or a competitive local exchange carrier, or by purchasing equipment from a non-regulated supplier. Therefore, the first consideration is satisfied.

The second consideration is whether the services of alternative providers are functionally equivalent or substitutable for the services of Sprint. Sprint's witness, Brian Staihr, testified that goods or services are substitutable when they satisfy the same demand. In other words, they are

substitutable if they have the actual or potential ability to take away significant amounts of business from each other.<sup>144[117]</sup> The evidence indicates that Sprint has lost 20 percent of its CENTREX business since June of 2001. It is reasonable to attribute most of this business loss to competition from customer-owned equipment. Although there are differences between Sprint's CENTREX services and switching services provided through customer-owned equipment, for example, a purchaser of customer-owned equipment must still purchase dial tone service from Sprint or some other local service provider, potential customers realize that they can use either alternative to satisfy their demand for switching services. As a result, customer-owned equipment is substitutable for Sprint's CENTREX service and satisfies the second consideration.

Customer-owned switching equipment is sold by unregulated competitors in an unregulated market. Therefore, the market determines the price charged for that equipment. If Sprint wishes to compete for that business, the prices it can charge for its services will be determined by that market as well. The third consideration is therefore satisfied.

Since the competition for Sprint's CENTREX service is coming from the unregulated market for equipment, there are no economic or regulatory barriers to entry and the fourth consideration is satisfied.

Sprint has not provided any exchange-by-exchange analysis of the competition for CENTREX service. But since its competitors are not limited to any single exchange – a supplier of customer-owned switching equipment can sell its hardware in one exchange as well as the next – there is no need for any such exchange-by-exchange analysis.

The Commission concludes that effective competition for Sprint's CENTREX services exists in each of its exchanges.

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<sup>144[117]</sup> Exhibit 5, Staihr Surrebuttal, Page 17-18, Lines 22-23, 1-2.

**Issue 7: Section 392.245.5, RSMo, allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its intraLATA private line services be classified as competitive. In which Sprint Missouri, Inc. exchanges, if any, should Sprint's intraLATA private line services be classified as competitive?**

Sprint's competition for these services comes not only from facilities-based competitive local exchange carriers but also from interexchange carriers and fiber network providers. These competitors can provide the same services as Sprint at comparable prices, thus controlling the rates that Sprint can charge for these services. Again, the other suppliers of intraLATA private line services are not limited to a single exchange. They can and do offer their services to customers in any of Sprint's exchanges. Therefore, there is no need for Sprint to make an exchange-by-exchange analysis of competition for these services. The Commission concludes that effective competition exists for these services in each of Sprint's exchanges.

**Issue 8: Section 392.245.5, RSMo, allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its ATM and Frame Relay services be classified as competitive. In which Sprint Missouri, Inc. exchanges, if any, should Sprint's ATM and Frame Relay services be classified as competitive?**

Sprint's competition for these services comes not only from facilities-based competitive local exchange carriers but also from interexchange carriers and fiber network providers. These competitors can provide the same services as Sprint at comparable prices, thus controlling the rates that Sprint can charge for these services. Again, the other suppliers of ATM and Frame Relay services are not limited to a single exchange. They can and do offer their services to customers in any of Sprint's exchanges. Therefore, there is no need for Sprint to make an exchange-by-exchange analysis of competition for these services. The Commission concludes that effective competition exists for these services in each of Sprint's exchanges.

**Issue 9: Section 392.245.5, RSMo, allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has**

**requested that its special access services be classified as competitive. In which Sprint Missouri, Inc. exchanges, if any, should Sprint's special access services be classified as competitive?**

Sprint withdrew its request to have these services classified as competitive.<sup>145[118]</sup> As a result, the Commission does not need to decide this issue.

**Issue 10: Section 392.245.5, RSMo, allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its intraLATA MTS services be classified as competitive. In which Sprint Missouri, Inc. exchanges, if any, should Sprint's intraLATA MTS services be classified as competitive?**

Sprint's competition for these services comes not only from facilities-based competitive local exchange carriers but also from interexchange carriers. These competitors can provide the same services as Sprint at comparable prices, thus controlling the rates that Sprint can charge for these services. Again, the other suppliers of intraLATA MTS services are not limited to a single exchange. They can and do offer their services to customers in any of Sprint's exchanges. Therefore, there is no need for Sprint to make an exchange-by-exchange analysis of competition for these services. The Commission concludes that effective competition exists for these services in each of Sprint's exchanges.

**Issue 11: Section 392.245.5, RSMo, allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its intraLATA WATS services and 800 services be classified as competitive. In which Sprint Missouri, Inc. exchanges, if any, should Sprint's intraLATA WATS services and 800 services be classified as competitive?**

Sprint's competition for these services comes not only from facilities-based competitive local exchange carriers but also from interexchange carriers. These competitors can provide the same services as Sprint at comparable prices, thus controlling the rates that Sprint can charge for these services. Again, the other suppliers of intraLATA WATS services and 800 services are not limited to a single exchange. They can and do offer their services to customers in any of Sprint's

exchanges. Therefore, there is no need for Sprint to make an exchange-by-exchange analysis of competition for these services. The Commission concludes that effective competition exists for these services in each of Sprint's exchanges.

**Issue 12: Section 392.245.5, RSMo, allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its Line Information Data Base Access (LIDB) services be classified as competitive. In which Sprint Missouri, Inc. exchanges, if any, should Sprint's LIDB services be classified as competitive?**

Sprint's competition for these services comes from several nation-wide carriers that own their own SS7 network and LIDB databases. These competitors can provide the same services as Sprint at comparable prices, thus controlling the rates that Sprint can charge for these services. Again, the other suppliers of SS7 and LIDB services are not limited to a single exchange. They can and do offer their services to customers in any of Sprint's exchanges. Therefore, there is no need for Sprint to make an exchange-by-exchange analysis of competition for these services. The Commission concludes that effective competition exists for these services in each of Sprint's exchanges.

**Issue 13: Section 392.245.5, RSMo, allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its Speed Dial services be classified as competitive. In which Sprint Missouri, Inc. exchanges, if any, should Sprint's Speed Dial services be classified as competitive?**

Sprint's competition for its speed dial services comes from every retail store in Missouri that sells telephone sets. Speed dial services can be duplicated by inexpensive telephone sets that are fully substitutable for the services offered by Sprint. The competition from customer owned equipment controls the rates that Sprint can charge for these services. Clearly telephone sets can be sold and used in any exchange in Missouri. Therefore, there is no need for Sprint to make an

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<sup>145[118]</sup> Exhibit 2, Idoux Surrebuttal, Page 2, Lines 20-21.

exchange-by-exchange analysis of competition for these services. The Commission concludes that effective competition exists for these services in each of Sprint's exchanges.

**Issue 14: Section 392.245.5, RSMo, allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its Payphone services offered in the Kearney, Norborne, Rolla, Platte City and St. Robert exchanges be classified as competitive. In which of these Sprint Missouri, Inc. exchanges, if any, should Sprint's Payphone services be classified as competitive?**

The payphone service that is at issue is the provision of an access line and related services to a payphone provider that will provide a phone for use by the public. Sprint's competition for payphone service can come either from a competitive local exchange company able to sell services to the payphone provider, or from sellers of equipment that the payphone provider can use to duplicate the service provided by Sprint or a competing telephone carrier. Sprint has requested that its payphone service be classified as competitive in those five exchanges in which it contends effective competition exists. Staff agrees that payphone services are competitive in those exchanges where basic local services are otherwise competitive. The Commission agrees that payphone services are competitive in those exchanges that are otherwise competitive. Therefore, the Commission concludes that payphone services are competitive in the Kearney, Rolla, and Norborne exchanges. Since it has found that effective competition does not exist in the Platte City and St. Robert exchanges, the Commission concludes that effective competition for payphone services does not exist in the Platte City and St. Robert exchanges.

**Issue 15: Section 392.245.5, RSMo, allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its Directory Assistance services be classified as competitive. In which Sprint Missouri, Inc. exchanges, if any, should Sprint's Directory Assistance services be classified as competitive?**

Facilities-based providers of basic local service compete with Sprint in providing directory assistance services in those exchanges where they provide service. However, Sprint

contends that it faces effective competition for this service in all of its exchanges from interexchange carriers, which also provide directory assistance services and are not restricted to providing services within a particular exchange.

A Sprint local service customer can access directory assistance services from his or her pre-subscribed long distance carrier by dialing 1 plus the desired area code plus 555-1212, or by dialing 00. However, that same Sprint customer, by dialing 1-411 or 555-1212 without the desired area code, will automatically be connected with Sprint. This does provide a distinct advantage to Sprint in those exchanges where it does not face effective competition for basic local service. A competitive local exchange company that offers facilities-based basic local service would enjoy the same advantage as Sprint with regard to directory assistance calls from its basic local customers. In other words, directory assistance services are closely tied to basic local services. Where there is effective competition for basic local services, there will also be effective competition for directory assistance calls.

Sprint also argues that it faces competition for directory assistance services from wholly non-regulated directory assistance search engines on the Internet. While such search engines certainly exist and can be used to look up phone numbers from around the country, Sprint failed to produce sufficient evidence to show what impact such non-regulated competition may have on the service it provides, and the Commission is not willing to speculate on such matters.

While Sprint's witness did testify that the volume of directory assistance calls that Sprint handles has decreased since 1998, Sprint was not able to establish the reason for that decline. It is clear, however, that the rates Sprint charges for directory assistance services have not declined in the face of competition, but rather have increased by 14.6 percent since 1999. The Commission earlier in this report and order indicated that rising rates do not necessarily preclude

a finding of effective competition. In part that holding was based on the fact that Sprint could not easily reduce rates for those few exchanges where it faced competition without reducing rates in those exchanges where it has no competitors. For this service, however, Sprint is alleging that it is facing competition across all of its exchanges. Therefore, it should have no difficulty in decreasing its statewide rates for directory assistance services if it believes that it must do so to meet competition. That Sprint has not been compelled to do so indicates that what competition does exist is not yet sufficient to discipline Sprint's rates.

The Commission finds that effective competition for Sprint's directory assistance services does not exist; except in those three exchanges where effective competition for other basic local services has been found to exist. Therefore, the Commission concludes that effective competition for Sprint's directory assistance services exists in the Kearney, Rolla, and Norborne exchanges but does not exist in any other Sprint exchange.

**Issue 16: Section 392.245.5, RSMo, allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its Local Operator services be classified as competitive. In which Sprint Missouri, Inc. exchanges, if any, should Sprint's Local Operator services be classified as competitive?**

Sprint is seeking statewide competitive classification for three specific local operator services: 1) station-to-station calls with automatic recording equipment; 2) station-to-station calls with operator assistance; and 3) person-to-person calls. Sprint contends that it faces effective competition for these services in all of its exchanges from interexchange carriers that offer their own operator services.

Operator services are closely tied to basic local service in the same way that directory assistance services are closely tied to that service. Operator services can be obtained from interexchange carriers but if a basic local customer uses the most familiar means of reaching an



operator, dialing 0 or 411, the customer will be connected to his or her basic local service provider, unless the customer has chosen a different intraLATA toll carrier. Similarly, whatever competition does exist has not disciplined Sprint's rates for operator services. Instead, Sprint's rates for those services have increased since 1999.

As it did for directory assistance services, the Commission finds that operator services are closely tied to basic local service and can be competitive only in those exchanges where effective competition for basic local service exists. Therefore, the Commission concludes that effective competition for operator services exists in the Kearney, Rolla, and Norborne exchanges, and that effective competition for operator services does not exist in any other Sprint exchange.

**Issue 17: Section 392.245.5, RSMo, allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its ISDN services offered in the Kearney, Norborne, Rolla, Platte City and St. Robert exchanges be classified as competitive. In which of these Sprint Missouri, Inc. exchanges, if any, should Sprint's ISDN services be classified as competitive?**

Sprint's request assumes that ISDN services are closely tied to basic local service and can only be competitive in those exchanges where effective competition for basic local service exists. As a result, Sprint is seeking competitive classification for those services only in the exchanges that are otherwise competitive. Fidelity offers ISDN services in Rolla and St. Robert, and ExOp offers those services in Kearney and Platte City. Both offer that service at rates that are lower than those offered by Sprint. However, Green Hills does not offer that service in Norborne. Sprint conceded that it does not face competition for ISDN service in the Norborne exchange and withdrew its request for competitive classification of ISDN service in that exchange. The Commission has found that the Rolla and Kearney exchanges are subject to effective competition and therefore concludes that there is effective competition for ISDN service in the Rolla and Kearney exchanges. The Commission has found that the St. Robert and Platte City exchanges

are not subject to effective competition and therefore concludes that there is no effective competition for ISDN service in the St. Robert and Platte City exchanges.

**Issue 18: Section 392.245.5, RSMo, allows the Commission to classify services of a Price Cap Company as competitive. Sprint Missouri, Inc., a Price Cap Company, has requested that its Optional MCA services offered in the Kearney exchange be classified as competitive. Should Sprint's Optional MCA services be classified as competitive in that Sprint Missouri, Inc. exchange?**

Sprint is seeking competitive classification for this service in the Kearney and Platte City exchanges where it offers Optional MCA and it contends its services are otherwise competitive. ExOp also offers Optional MCA service in the Kearney and Platte City exchanges and does so at rates that are lower than the rates offered by Sprint. Sprint does not offer MCA services in the Rolla, St. Robert, or Norborne exchanges so this issue does not apply to those exchanges. Optional MCA service can only be offered to a customer who is already receiving basic local service either from Sprint or from a competitive local exchange carrier. Optional MCA service is, therefore, closely tied to basic local service and can only be effectively competitive where basic local service is effectively competitive. The only exchange in which Sprint offers Optional MCA service and in which the Commission has found that effective competition exists is Kearney. The Commission concludes that effective competition for Optional MCA service exists in the Kearney exchange. Conversely, the Commission has found that effective competition does not exist in the Platte City exchange so the Commission concludes that effective competition for Optional MCA service does not exist in the Platte City exchange.

**Issue 19: In absence of a request by Sprint Missouri, Inc. for the reclassification of a service in an exchange pursuant to Section 392.245.5 RSMo from price cap regulation to competitive status, should the Commission make a finding that effective competition does not exist and order that the current price cap regulation continue to apply?**

In its testimony and arguments before the Commission, Sprint requested that the Commission make a finding that only 5 of its 80 exchanges and only a few of its statewide

services were subject to effective competition. This issue concerns what should be done about the other exchanges and services for which Sprint has not requested a finding of effective competition.

Sprint argues that the Commission need not make an affirmative finding that competition does not exist in those exchanges and for those services. Rather, Sprint would have the Commission merely find that there was no evidence presented that would justify a finding that effective competition does, or does not, exist for those exchanges and services. Price Cap regulation would then continue to apply for those exchanges and services. Staff and Public Counsel argue that the Commission should make an affirmative finding that price cap regulation should continue to apply in exchanges, and for services, where Sprint has not proved that effective competition exists.

This issue exists because of the provision in Section 392.245.5 that requires that the services of an incumbent local exchange telecommunications company are to be classified as competitive in any exchange in which at least one alternative local exchange telecommunications company has been providing basic local telecommunications services for at least five years. That competitive classification of exchanges and services occurs automatically unless the Commission determines, after notice and hearing, that effective competition does not exist in that exchange for those services.

Staff and Public Counsel would like to be able to use this proceeding to foreclose any argument that exchanges and services not specifically addressed in this proceeding will at some point be automatically deemed effectively competitive without a finding of effective competition by the Commission. Sprint, on the other hand, would like to keep that possibility open.

The Commission indicated in the order creating this case that the case was established to “investigate the state of competition in Sprint’s exchanges.” That statement indicates that the Commission intended to make a finding about the existence of competition in all of Sprint’s exchanges. Sprint chose to argue that effective competition exists only in five exchanges and chose to present evidence about only those five exchanges. The record does not include an exchange-by-exchange history of activity by competitive carriers in Sprint’s exchanges. But by Sprint’s silence on its other 75 exchanges, the Commission would be justified in presuming that there is no evidence to support a finding of effective competition in those exchanges.

In any event, the Commission is not required to make that presumption. Sprint has the burden of proving that effective competition exists in its exchanges. It presented evidence to attempt to meet that burden of proof in only five exchanges. The Commission found that it actually met its burden in only three exchanges. That means that for its other 77 exchanges, Sprint has not met its burden of proving that effective competition exists. Therefore, the Commission will find that effective competition does not exist in those 77 exchanges.

**Issue 20: Section 392.245.5, RSMo, provides that the Commission shall investigate the state of competition in Sprint’s exchanges within five years of an alternative local exchange telecommunications company first being certified. ExOp of Missouri Inc.’s certification was effective December 15, 1998. If the Commission does not issue a decision in this case by December 15, 2003, will any of Sprint Missouri Inc.’s telecommunications services in any Sprint Missouri, Inc. exchange be automatically reclassified or reclassified by default from price cap regulation to a competitive status?**

All parties agree that December 15, 2003, is the fifth anniversary of ExOp being the first alternative local exchange telecommunications company certified to provide service in Sprint’s territory. However, ExOp did not actually start offering services in a Sprint exchange until February 1999. Therefore, the parties agree that the Commission does not have to issue a decision by December 15.

IT IS THEREFORE ORDERED:

**1. That Sprint Missouri, Inc. d/b/a Sprint's residence core access line services offered in the Kearney, Rolla and Norborne exchanges are classified as competitive. In all other Sprint exchanges, those services are not competitive and remain subject to price cap regulation.**

**2. That Sprint Missouri, Inc. d/b/a Sprint's residence access line-related services offered in the Kearney, Rolla and Norborne exchanges are classified as competitive. In all other Sprint exchanges, those services are not competitive and remain subject to price cap regulation.**

**3. That Sprint Missouri, Inc. d/b/a Sprint's business core access line services offered in the Kearney, Rolla and Norborne exchanges are classified as competitive. In all other Sprint exchanges, those services are not competitive and remain subject to price cap regulation.**

**4. That Sprint Missouri, Inc. d/b/a Sprint's business access line-related services offered in the Kearney, Rolla and Norborne exchanges are classified as competitive. In all other Sprint exchanges, those services are not competitive and remain subject to price cap regulation.**

**5. That Sprint Missouri, Inc. d/b/a Sprint's CENTREX services are classified as competitive in all of Sprint's exchanges.**

**6. That Sprint Missouri, Inc. d/b/a Sprint's intraLATA private line services are classified as competitive in all of Sprint's exchanges.**

**7. That Sprint Missouri, Inc. d/b/a Sprint's ATM and Frame Relay services are classified as competitive in all of Sprint's exchanges.**

**8. That Sprint Missouri, Inc. d/b/a Sprint's intraLATA MTS services are classified as competitive in all of Sprint's exchanges.**

**9. That Sprint Missouri, Inc. d/b/a Sprint's intraLATA WATS Services and 800 services are classified as competitive in all of Sprint's exchanges.**

**10. That Sprint Missouri, Inc. d/b/a Sprint's Line Information Data Base Access (LIDB) services are classified as competitive in all of Sprint's exchanges.**

**11. That Sprint Missouri, Inc. d/b/a Sprint's Speed Dial services are classified as competitive in all of Sprint's exchanges.**

**12. That Sprint Missouri, Inc. d/b/a Sprint's Payphone services offered in the Kearney, Rolla and Norborne exchanges are classified as competitive. In all other Sprint exchanges, those services are not competitive and remain subject to price cap regulation.**

**13. That Sprint Missouri, Inc. d/b/a Sprint's Directory Assistance services offered in the Kearney, Rolla and Norborne exchanges are classified as competitive. In all other Sprint exchanges, those services are not competitive and remain subject to price cap regulation.**

**14. That Sprint Missouri, Inc. d/b/a Sprint's Local Operator services offered in the Kearney, Rolla and Norborne exchanges are classified as competitive. In all other Sprint exchanges, those services are not competitive and remain subject to price cap regulation.**

**15. That Sprint Missouri, Inc. d/b/a Sprint's ISDN services offered in the Kearney and Rolla exchanges are classified as competitive. In all other Sprint exchanges, those services are not competitive and remain subject to price cap regulation.**

**16. That Sprint Missouri, Inc. d/b/a Sprint's Optional MCA services offered in the Kearney exchange are classified as competitive. In all other Sprint exchanges, those services are not competitive and remain subject to price cap regulation.**

**17. That for all other exchanges served by Sprint, the Commission finds that effective competition does not exist and that for those exchanges, Sprint remains subject to price cap regulation.**

➤ 1. 18. That any pending motions that the Commission has not specifically ruled upon are denied.

➤ 2. 19. That this Report and Order shall become effective on December 14, 2003.

➤ 3.

**BY THE COMMISSION**

**Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge**

( S E A L )

Simmons, Forbis, and Clayton, CC., concur;  
Gaw, Ch., concurs in part and dissents in part,  
with separate concurring opinion to follow;  
Murray, C., concurs, with separate concurring  
opinion attached;  
all certify compliance with the provisions of  
Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 4th day of December, 2003.

**BEFORE THE PUBLIC SERVICE COMMISSION**

**OF THE STATE OF MISSOURI**

In the Matter of the Investigation of the State of )  
Competition in the Exchanges of Sprint Missouri, Inc. ) **Case No. IO-2003-0281**

**CONCURRING OPINION OF CHAIRMAN STEVE GAW**

Although I generally concur in today's decision, I disagree with several findings about whether a single competitor in a rural exchange can provide healthy, sustainable, competition. The evidence presented to the Commission indicates that a competing company has taken a significant share of the local service market in three of Sprint's exchanges. However, I question whether the presence of that competition will be an effective restraint on Sprint's pricing decisions. I fear that rather than acting to meet competition, Sprint could choose to effectively abandon a small exchange by raising its prices. This is particularly a concern in a very small exchange, such as Norborne. If that were to happen, a small, rural exchange could find itself served essentially only by a minimally regulated competitive local exchange carrier that is not subject to effective price competition. Thus, I would not designate that the rural markets were competitive without significant assurance that competition were likely to continue. Additional competitors would improve that outlook. Any of the other decision points that rely on a finding about competitive designation I would also alter consistent with the designation.



I agree with the remainder of the opinion.

Respectfully submitted,

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Steve Gaw, Chairman

( S E A L )

Dated at Jefferson City, Missouri,  
on this 8th day of December, 2003.

In the Matter of the Investigation of the State of )  
Competition in the Exchanges of Sprint Missouri, Inc. ) **Case No. IO-2003-0281**

( )

Exhibit D